SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No.

B. H. INNESS BROWN, DAVID PAINE, ETHELBERT WARFIELD, ET AL., PETITIONERS,

vs.

JOHN GERDES AND JAMES D. CARPENTER, JR., TRUSTEES OF REYNOLDS INVESTING CO., INC., DEBTOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

INDEX.

	Original	Print
Record on appeal to Court of Appeals of New York	1	1
Statement under Rule 234	1	1
Notice of appeal to Appellate Division from order overruling respondents' objections to jurisdiction of the court	3	2
Notice of appeal to Appellate Division from order overruling respondents' objections to jurisdiction of the court, order fixing lien and amount of attorneys' compensation and order denying motion to resettle said order	5	3
Order overruling respondents' objections to jurisdiction of the court appealed from	8	4
Order fixing lien and amount of attorneys' compensation appealed from	10	6
Order denying motion to resettle order, dated April 15, 1942, appealed from	15	9
Notice of motion	16	9
Petition of B. H. Inness Brown, et al	18	10

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 12, 1943.

—7017

	Original	Print
Record on appeal to Court of Appeals of New York—Continued		
Note re Exhibit "A"	35	21
Exhibit "B"—Letter, dated June 3, 1941, from J. Gerdes, et al., to Greenbaum, Wolff & Ernst, et al.	35	22
Exhibit "C"—Letter, dated June 4, 1941, from Kellogg, Emery & Inness-Brown to James D. Carpenter, et al.	37	23
Exhibit "D"—Stipulation filed in the District Court of the United States for the District of New Jersey—In the Matter of Reynolds Investing Company, Inc.	39	24
Answer of trustees	42	26
"Exhibit "A"—Plan of reorganization of the debtor filed in the District Court of the United States for the Disrtict of New Jersey	50	32
Exhibit "B"—Order of District Court of the United States for the District of New Jersey approving petition in reorganization	84	55
Exhibit "C"—Order of District Court of the United States for the District of New Jersey confirming plan of reorganization	94	62
Affidavit of David Paine	102	67
Hearings before Walter, J., on value of services	105	69
Appearances	105	69
Colloquy between court and counsel	105	69
Testimony of Ethelbert Warfield	112	74
Colloquy between court and counsel	121	81
Testimony of Lawrence S. Greenbaum	124	83
James F. Dwyer	127	86
Lawrence S. Greenbaum (recalled)	131	89
Notes re Petitioner's Exhibits "1" "2" "3" and "4"	133	90
Petitioner's Exhibit "5"—Letter, dated March 31, 1942, from Satterlee & Warfield, et al., to John Gerdes, et al.	134	91
Petitioner's Exhibit "6"—Letter, dated April 1, 1942, from Satterlee & Warfield, et al., to John Gerdes, et al.	136	92
Petitioner's Exhibit "7"—Letter, dated April 1, 1942, from David Paine to Edward B. Twombly	137	92
Petitioner's Exhibit "8"—Letter, dated April 7, 1942, from John Gerdes to Honorable Carroll G. Walter	138	93
Notice of motion to resettle order dated April 15, 1942	139	94
Affidavit of John Gerdes in support of motion to resettle order dated April 15, 1942	141	95
Note re Exhibit "A"	142	96
Affidavit of Lawrence S. Greenbaum in opposition to motion to resettle order dated April 15, 1942	142	96
Opinion of Walter, J., on order overruling respondents' objections to jurisdiction of the court	145	98

	Original	Print
Record on appeal to Court of Appeals of New York—Continued		
Opinion of Walter, J., on order fixing lien and amount of Attorneys' compensation	162	109
Affidavit of no other opinion	169	114
Stipulation as to exhibits	170	114
Stipulation settling case	172	115
Order settling case	172	115
Stipulation waiving certification	173	116
Order filing record in Appellate Division	173	116
Notice of appeal to Court Appeals	175	116
Order of affirmance—Appellate Division	178	118
Affidavit of no opinion by Appellate Division	181	119
Stipulation waiving certification	182	120
Supplemental record on appeal to Court of Appeals	183	120
Supplemental statement under Rule 234	184	120
Notice of appeal to Court of Appeals after entry of order allowing appeal	185	121
Order of court of Appeals allowing appeal thereto	188	122
Stipulation waiving certification to Court of Appeals	189	123
Opinion, Finch, J., Court of Appeals	190	124
Remittitur of Court of Appeals	195	129
Order denying motion for reargument	197	130
Order on remittitur of Court of Appeals	198	131
Clerk's certificates (omitted in printing)	200	
Order allowing certiorari	201	132

[fol. 1]

IN THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

In the Matter of the Application of

B. H. Inness Brown, David Paine, Ethelbert Warfield, J. Fearon Brown, George Koegler and Murray MacElhinny, individually and as co-partners doing business up to the close of business October 31, 1941 under the firm name and style of Kellogg, Emery & Inness-Brown and

Lawrence S. Greenbaum, Edward S. Greenbaum, Herbert A. Wolff, Morris L. Ernst, Jonas J. Shapiro, Wallace D. Jennings, Samuel J. Schur and Alexander Lindey, individually and as co-partners doing business under the firm name and style of Greenbaum, Wolff & Ernst Petitioners-Respondents,

for an order fixing the amount to which petitioners are entitled as compensation and for the determination and enforcement of their liens for services rendered in a certain action in this court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Vincent E. Ferretti et al., Defendants; and a certain action in this Court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Richard S. Reynolds and William F. Woodward, Defendants, and a certain action in this Court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Globe Indemnity Co., Inc., Defendants.

John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, Respondent-Appellants

Statement Under Rule 234

[fol. 2] Appellants appeal from an order dated March 26, 1942 overruling appellants' objections to the jurisdiction of the Court; an order dated April 15, 1942 fixing the amount

to which respondents are entitled as compensation and determining respondents have a lien for services rendered; and from an order dated April 29, 1942 denying appellants' motion to resettle order dated April 15, 1942.

This proceeding was commenced by service of notice and petition on December 23, 1941.

The answer of respondents was served January 12, 1942.

The reply was served January 16, 1942.

The original petitioners are the law firms of Kellogg, Emery & Inness-Brown and Greenbaum, Wolff & Ernst.

The respondents are John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor.

Petitioner's attorneys are Satterlee & Warfield and Greenbaum, Wolff & Ernst.

Respondents are appearing pro se.

There has been no change of parties or attorneys herein.

A notice of appeal from the order dated March 26, 1942 was served on April 23, 1942 and filed on April 24, 1942. The notice of appeal from an order dated April 15, 1942 which also provides for the review of the order dated March 26, 1942 and the order dated April 29, 1942 was served and filed on May 7, 1942.

[fol. 3] In Supreme Court of New York, New York County

[Title omitted]

Notice of Appeal from Order Overruling Respondents' Objections to Jurisdiction of the Court—April 23, 1942

[fol. 4] Sirs:

Please Take Notice that John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, the respondents in the above special proceeding hereby appeal to the Appellate Division of the Supreme Court, First Department, from the order dated March 26, 1942, in said proceedings and entered in the office of the Clerk of the County of New York on March 27, 1942, overruling respondents' objections to the jurisdiction of the

Court, and this appeal is taken from the whole and from each and every part of said order.

Dated, April 23, 1942.

Yours, etc., John Gerdes and James D. Carpenter, Jr., As Trustees of Reynolds Investing Company, Inc., Debtor, Respondents, Pro Se, One Wall Street, Borough of Manhattan, New York City.

To: Satterlee & Warfield, 49 Wall Street, New York, New York; Greenbaum, Wolff & Ernst, 285 Madison Avenue, New York, New York, Attorneys for Petitioners. Archibald R. Watson, Esq., Clerk of the County of New York.

[fol. 5] In Supreme Court of New York, New York County

Notice of Appeal From Order Overruling Respondents' Objections to Jurisdiction of the Court, Order Fixing Lien and Amount of Attorneys' Compensation and Order Denying Motion to Resettle Said Order—May 6, 1942

[Title omitted]

[fol. 6] Sirs:

Please Take Notice that John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, respondents, hereby appeal to the Appellate Division of the Supreme Court, First Department, from the order dated and entered in the above entitled proceeding in the office of the Clerk of the County of New York on the 15th day of April, 1942 adjudging that the petitioners have a lien to the extent of $102,250. upon the judgment entered in a certain cause of action in this Court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Vincent E. Ferretti, et al., Defendants; and adjudging that the petitioners have a lien to the extent of $2,045. upon a cause of action in an action in this Court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Richard S. Reynolds and William F. Woodward, Defendants; and adjudging that the peti-

tioners have a lien to the extent of $766.87 upon a cause of action in an action in this Court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Globe Indemnity Co., Inc., Defendant and from each and every part thereof.

Please Take Notice that said John Gerdes and James D. [fol. 7] Carpenter, Jr., as Trustees of Reynolds Investing Co., Inc., Debtor, respondents, appeal from and will bring up for review an order made in the above entitled proceeding, dated March 26, 1942, and entered in the office of the Clerk of the County of New York on March 27, 1942, overruling respondents' objections to the jurisdiction of the Court and from the whole and from each and every part of said order.

Please Also Take Notice that said John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Co., Inc., Debtor, respondents, appeal from and will bring up for review an order made in the above entitled proceeding, dated April 29, 1942, and filed in the office of the Clerk of the County of New York on April 30, 1942, denying respondents' motion for resettlement of the order of April 15, 1942 hereinbefore referred to, and from the whole and from each any every part of said order.

Dated May 6, 1942.

Yours, etc., John Gerdes and James D. Carpenter, Jr., As Trustees for Reynolds Investing Company, Inc., Debtor, Respondents, Pro Se, Office and Post Office Address, One Wall Street, Borough of Manhattan, New York City.

[fol. 8] To: Satterlee & Warfield, Esqs., 49 Wall Street, New York City; Greenbaum, Wolff & Ernst, Esqs., 285 Madison Avenue, New York City, Attorneys for Petitioners. Archibald R. Watson, Esq., Clerk of the County of New York.

In Supreme Court of New York, New York County

Order Overruling Respondents' Objections to Jurisdiction of the Court Appealed From—Filed March 27, 1942

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New

York, at the Court House, Foley Square, on the 26th day of March, 1942.

Present—Hon. Carroll G. Walter, Justice.

The petitioners having moved this Court for an order fixing the amount to which they are entitled as compensation and for the determination and enforcement of their liens for services rendered in the above-entitled actions, and respondents having filed an answer questioning the jurisdiction of this Court, and said motion having duly come [fol. 9] on to be heard before me, and the Court having by its opinion appearing in the New York Law Journal March 6, 1942 overruled respondents' objections to the jurisdiction of the Court and granted respondents ten days from publication of said opinion to answer further with respect to the merits, and having thereafter further extended respondents' time to so answer to March 20, 1942, and respondents having elected not an answer further on the merits,

Now, on reading and filing the notice of motion and petition herein, both dated December 22, 1941, and the affidavit of David Paine, sworn to January 15, 1942, in support of said motion and the answer of respondents verified January 12, 1942, in opposition thereto, and after hearing David Paine, of Counsel for petitioners, in support of the motion, and John Gerdes pro se of Counsel in opposition thereto, and due deliberation having been had, and upon the filing of the opinion of the Court,

It is, on motion of Satterlee & Warfield and Greenbaum, Wolff & Ernst, attorneys for petitioners,

Ordered that the objections to the jurisdiction of the Court, as set forth in the answer of respondents, are hereby overruled to which ruling respondents duly excepted; and it is further

Ordered that the matter be and hereby is set down for hearing upon the merits before me in the Bronx County Court House, Trial Term Part III, at 2 o'clock P. M. on [fol. 10] March 31, 1942, to assess the value of services rendered by petitioners in the above-entitled actions, and to determine and enforce their liens thereto for such services.

Enter, C. G. W., Justice of the Supreme Court.

Filed March 27, 1942.—New York County Clerk's Office.

IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

ORDER FIXING LIEN AND AMOUNT OF ATTORNEYS' COMPENSATION APPEALED FROM—April 15, 1942

Present:— Hon. Carroll G. Walter, *Justice*.

The issues in this proceeding having come on duly for hearing on the 31st day of March, 1942, pursuant to the intermediate order herein of March 26, 1942, and John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Respondents, at that time having advised the Court by John Gerdes, Esq. that they [fol. 11] were appearing specially herein to request the Court to adjourn said hearing until the determination by the Appellate Division of an application therein by respondents for an order under Article 78 of the Civil Practice Act prohibiting the Court from proceeding herein, and said respondents having stated then and there that the Appellate Division had denied an application by said respondents for a stay of the proceedings herein, and said request for an adjournment having been denied, and the respondents having been directed by the Court to proceed herein, and said respondents having declined to proceed, and proof having been taken of the services rendered by petitioners, and at the conclusion thereof the Court having adjourned said hearing until April 8, 1942 for the express purpose of giving respondents an opportunity of presenting any matter relevant to the issues herein and particularly to advise the Court with respect to their opinion of the value of the services rendered by petitioners, and respondents having been duly advised of said adjournment and the purposes thereof, and having defaulted in appearing at the adjourned hearing on April 8, 1942, and the Court having thereupon duly fixed the fair and reasonable value of the services rendered by petitioners as attorneys for respondents in the action herein first above entitled at the sum of $100,000, and in the action herein second above entitled at the sum of $2,000, and in the action herein third above entitled at the sum of $750,

Now, it is, upon motion of Satterlee & Warfield and Greenbaum, Wolff & Ernst, attorneys for petitioners, [fol. 12]—Ordered, adjudged and decreed that the petitioners B. H. Inness Brown, David Paine, Ethelbert War-

field, J. Fearon Brown, George Koegler and Murray MacElhinny, individually and as co-partners, doing business up to the close of business October 31, 1941 under the firm name and style of Kellogg, Emery & Inness-Brown, of 49 Wall Street, Borough of Manhattan, City of New York, and Lawrence S. Greenbaum, Edward S. Greenbaum, Herbert A. Wolff, Morris L. Ernst, Jonas J. Shapiro, Wallace D. Jennings, Samuel J. Schur and Alexander Lindey, individually and as co-partners doing business under the firm name and style of Greenbaum, Wolff & Ernst, of 285 Madison Avenue, Borough of Manhattan, City of New York, be, and they hereby are, adjudged to have a lien to the extent of $100,000 with interest from November 27, 1941 amounting to $2,250, amounting in all to $102,250 upon the judgments entered in a certain action in this Court (described in the petition herein as Action No. 1) entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Vincent E. Ferretti, et al., Defendants, and the proceeds thereof in whatever hands they may come, including, without limiting the foregoing, any sum of money or other consideration paid or to be paid by any defendant in said action in settlement of said judgments, and that petitioners may enforce said liens in any mannner permitted by law; and it is further

Ordered, adjudged and decreed that the petitioners B. H. Inness Brown, David Paine, Ethelbert Warfield, J. Fearon Brown, George Koegler and Murray MacElhinny, indi- [fol. 13] vidually and as co-partners, doing business up to the close of business October 31, 1941 under the firm name and style of Kellogg, Emery & Inness-Brown, of 49 Wall Street, Borough of Manhattan, City of New York, and Lawrence S. Greenbaum, Edward S. Greenbaum, Herbert A. Wolff, Morris L. Ernst, Jonas J. Shapiro, Wallace D. Jennings, Samuel J. Schur and Alexander Lindey, individually and as co-partners doing business under the firm name and style of Greenbaum, Wolff & Ernst, of 285 Madison Avenue, Borough of Manhattan, City of New York, be, and they hereby are, adjudged to have a lien to the extent of $2,000 with interest from November 27, 1941 amounting to $45.00 amounting in all to $2,045.00 upon plaintiffs' cause of action in an action in this Court (described in the petition herein as Action No. 2) entitled John Gerdes and James

D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Richard S. Reynolds and William F. Woodward, Defendants, and that said lien attaches to any verdict, report, determination, decision, judgment or final order in plaintiffs' favor therein and the proceeds thereof in whatever hands they come, including, without limiting the foregoing, any sum of money or other consideration paid or to be paid by any defendant in said action in settlement of said judgments and that petitioners may enforce said lien in any manner permitted by law; and it is further

Ordered, adjudged and decreed that the petitioners B. H. Inness Brown, David Paine, Ethelbert Warfield, J. Fearon Brown, George Koegler and Murray MacElhinny, individually and as co-partners, doing business up to the close of business October 31, 1941 under the firm name and style [fol. 14] of Kellogg, Emery & Inness-Brown, of 49 Wall Street, Borough of Manhattan, City of New York, and Lawrence S. Greenbaum, Edward S. Greenbaum, Herbert A. Wolff, Morris L. Ernst, Jonas J. Shapiro, Wallace D. Jennings, Samuel J. Schur and Alexander Lindey, individually and as co-partners doing business under the firm name and style of Greenbaum, Wolff & Ernst, of 285 Madison Avenue, Borough of Manhattan, City of New York, be, and they hereby are, adjudged to have a lien to the extent of $750 with interest from November 27, 1941 amounting to $16.87, amounting in all to $766.87 upon plaintiffs' cause of action in an action in this Court (described in the petition herein as the Globe Action) entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Globe Indemnity Co., Inc., Defendant, and that said lien attaches to any verdict, report, determination, decision, judgment or final order in plaintiffs' favor therein and the proceeds thereof in whatever hands they come, including without limiting the foregoing any sum of money or other consideration paid or to be paid by the defendant in said action in settlement of said judgments and that petitioners may enforce the same in any manner permitted by law; and it is further

Ordered, adjudged and decreed that petitioners may apply at the foot hereof for additional and further relief to enforce said liens.

Enter: C. G. W. Justice of the Supreme Court of the State of New York.

[fol.15] In Supreme Court of New York, New York County
Order Denying Motion to Resettle Order, Dated April 15, 1942, Appealed from—Filed April 30, 1942

Present—Hon. Carroll G. Walter, *Justice*.

The following papers numbered 1 to 5 read on this motion submitted and referred this 27 day of April, 1942.
Calendar No. 119.

	Papers Numbered
Notice of Motion and Affidavits Annexed	1 to 3
Answering Affidavits	4
Filed Papers (County Clerk's Office)	
Order of April 15	5

Upon the foregoing papers this motion to resettle final order of April 15, 1942 is denied. It is a strange notion that a litigant may deliberately refrain from attending a hearing before a court and yet convey allegedly pertinent ideas and information by means of a letter to the judge. The court will tolerate no such practice. As the United States delivers mail to whomsoever it is addressed, the judge is powerless to protect himself against physical receipt of such a letter, [fol. 16] but for judicial purposes the court treats the letter as non-existent.

Dated: April 29, 1942.
C. G. W., *J. S. C.*
Filed April 30, 1942.
New York County Clerk's Office.

In Supreme Court of New York, New York County

Notice of Motion.—December 22, 1941

Sirs:

Please take notice that upon the annexed petition duly verified December 22, 1941, the undersigned will move this Court at a Special Term, Part I thereof, to be held at the County Court House, Worth and Centre Streets, New York City, on the 12th day of January, 1942, at 10:00 A. M. in the forenoon thereof, or as soon thereafter as counsel can be heard, for an order fixing the amount to which petitioners are entitled as compensation and for the determination and

enforcement of their liens for services rendered in the above-entitled actions.

Dated: December 22, 1941.

Satterlee & Warfield, 49 Wall Street, New York City.
[fol. 17] Greenbaum, Wolff & Ernst, 285 Madison Avenue, New York City, Attorneys for Petitioners.

To: John Gerdes, Esq., 1 Wall Street, New York City, New York, and James D. Carpenter, Esq., 75 Montgomery Street, Jersey City, New Jersey, Trustees of Reynolds Investing Company, Inc., Debtor.

[fol.18] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

PETITION OF B. H. INNESS BROWN, ET AL.—December 22, 1941

[Title omitted]

To the Supreme Court, New York County:

The petition of B. H. Inness Brown, David Paine, Ethelbert Warfield, J. Fearon Brown, George Koegler and Murray MacElhinny, individually and as co-partners doing business up to the close of business October 31, 1941 under the firm name and style of Kellogg, Emery & Inness Brown, which firm was dissolved on said date, and Lawrence S. Greenbaum, Edward S. Greenbaum, Herbert A. Wolff, Morris L. Ernst, Jonas J. Shapiro, Wallace D. Jennings, Samuel J. Schur and Alexander Lindey, individually and as co-partners doing business under the firm name and style of [fol. 19] Greenbaum, Wolff & Ernst, respectfully shows to this Court and alleges:

I. The firms of Kellogg, Emery & Inness Brown and Greenbaum, Wolff & Ernst, are attorneys of record for the plaintiffs in a certain action pending in this Court wherein the plaintiffs are John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, and Clarence K. Reynolds, et al. are defendants (hereinafter called Action No. 1.); said firms are attorneys of record for plaintiffs in an action pending in this Court wherein the plaintiffs are John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, and Clarence K. Reynolds, Richard S. Reynolds and William F. Woodward are defendants (hereinafter

called Action No. 2); and said firms are attorneys of record for plaintiffs in an action in this Court wherein John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, are plaintiffs, and wherein the defendant is Globe Indemnity Co. (hereinafter called the Globe Action).

II. On or about May 18, 1938 a petition for reorganization under the Federal Bankruptcy Act was filed against Reynolds Investing Co., Inc., a Delaware corporation (hereinafter called Investing), in the United States District Court for the District of New Jersey. As appears from said petition filed therein, the act of bankruptcy and insolvency of Investing arose from the wrongful extraction of upwards of $882,500 from the treasury of Investing in or about December, 1937 and January, 1938.

[fol. 20] III. On June 21, 1938 three of the four members of the Board of Directors of Investing resigned and, pursuant to an arrangement approved by Judge Fake of said United States District Court, they elected as their successors Arthur T. Vanderbilt, then the President of the American Bar Association, Fred G. Stickel, Jr., former Common Pleas Judge of the State of New Jersey, and Charles F. Lynch, former United States District Judge for the District of New Jersey.

On June 22, 1938 said Board of Directors of Investing passed a resolution instructing the New Jersey counsel for Investing to consult with your petitioners' firms to determine what, if any, action should be taken against certain former officers and directors of Investing and others to recover moneys improperly taken from Investing's treasury and to consider other claims which Investing might have. On June 27, 1938 the said Board of Directors passed a resolution instructing your petitioners' firms to prepare a formal report on a proposed bill in equity against said former officers and directors of Investing. Pursuant thereto and on or about July 6, 1938, your petitioners' firms prepared and delivered to said Board a written report setting forth their opinion as to the liability of said former officers and directors to Investing by reason of their transfer of control and management of Investing on December 31, 1937 and the wrongful removal and sale of Investing's securities on or about December 31, 1937

and January, 1938 and the suggested procedure for enforcing said liability.

IV. On August 1, 1938, in a conference with said Board of Directors, your petitioners' firms advised said Board [fol. 21] of Directors that an action should be instituted in the Supreme Court, New York, on behalf of Investing, against said former officers and directors and certain other persons based upon their transfer of control and management of Investing on December 31, 1937 and the theft of the $882,500 in January, 1938 and other breaches of trust committed prior thereto. Acting upon said advice, said Board of Directors authorized the President of Investing to apply to Judge Fake for permission to institute an equity suit in New York to enforce the liabilities mentioned above. On August 1, 1938, Judge Fake made an order authorizing the institution of such suit or suits and the retention of your petitioners' firms to act as attorneys therein for Investing.

V. On August 4, 1938, your petitioner's firms, pursuant to the order of Judge Fake dated August 1, 1938, served upon certain of the defendants copies of the summons and complaint in Action No. 1. The causes of action in said complaint revolved about the transactions which occurred on December 31, 1937 and certain transactions which occurred in the period 1928-1932.

VI. On January 19, 1939, after a number of hearings were held in the reorganization proceedings, Judge Fake entered an order approving the petition and amended petition for reorganization and appointing John Gerdes and James D. Carpenter, Jr., Trustees of Investing. Said order of appointment provided, inter alia, that the Trustees were authorized and empowered to prosecute, become a party to or defend actions in which the debtor had an interest as plaintiffs or defendants and to be sub- [fol. 22] stituted as parties therein in the action which had been commenced pursuant to the order of the Court dated August 1, 1938, and to proceed with said action in accordance with the terms of said order. On February 10, 1939, an order was signed by Mr. Justice Shientag substituting said John Gerdes and James D. Carpenter, Jr. as Trustees of Reynolds Investing Co., Inc., Debtor, as plaintiffs in said Action No. 1.

VII. Certain motions to strike various allegations and paragraphs of the complaint and to dismiss certain causes of action contained therein were made by defendants Clarence K. Reynolds and William F. Woodward which resulted in a decision generally favorable on all points to plaintiffs. An appeal was taken by said defendants to the Appellate Division from the order of Special Term denying said motions. On February 17, 1938, the Appellate Division unanimously affirmed the order of Special Term which denied the said motions to strike out certain portions of the complaint and to dismiss certain causes of action therein. Thereafter leave to appeal from part of said order of the Appellate Division was granted and an appeal was taken to the Court of Appeals. The Court of Appeals sustained the claim of plaintiffs in so far as the action related to wrongs committed on and subsequent to December 31, 1937, but held that the cause of action in the complaint relating to wrongs committed by said directors in 1928-1932 was insufficient because it did not contain specific allegations of wrongdoing. As will appear more fully hereafter, your petitioners' firms, after consulting with and obtaining the approval of the plaintiffs, began the ac-[fol. 23] tion heretofore referred to as Action No. 2, in which there were alleged specifically the wrongdoings committed by said directors in the period 1928-1932.

VIII. A motion made by defendant Alexander H. McLanahan to dismiss the causes of action in No. 1 referring to the December 31, 1937 transaction was denied by Mr. Justice Rosenman.

IX. After issue was joined by the service of answers of twenty-five defendants in Action No 1, an order was obtained directing their examination before trial and pursuant thereto your petitioners' firm examined seventeen defendants whose testimony covered 2,000 pages. At the same time your petitioners' firms aided and cooperated with one of the Trustees, James D. Carpenter, Jr., in the examination of witnesses in New Jersey and Virginia in proceedings under 21-A of the Federal Bankruptcy Act relating to and for the purpose of preparing the New York actions, No. 1 and No. 2. In aid of said examinations before trial and generally for the preparation of the trial of Action No. 1, your petitioners' firms attended or read the minutes of the investigations of the Attorney General

of the State of New York and the Securities and Exchange Commission into the looting of certain investment trusts including Investing, attended the trial in the United States District Court of the Southern District of New York in *United States of America* v. *Paine*, and the trial at General Sessions of *People* v. *Vincent E. Ferretti, et al.*, all of which investigations and trials were of extensive nature [fol. 24] and covered many thousands of pages of testimony. Although these investigations and trials were concerned partly with the looting of other corporations, an examination thereof was necessary in order to establish the systematic plan and design of the defendants to acquire and loot Investing; that is, the looting of Investing was part of a larger conspiracy to acquire and loot investment trusts by substantially the same group of people adopting substantially similar methods.

In addition to the investigation of the many complex questions of fact, including difficult problems of valuation of securities in the portfolio of Investing, the preparation entailed research and examination covering a wide variety of questions of law, many of which were novel.

X. After a thorough and painstaking investigation of the facts and law and the examination of all appropriate parties, your petitioners' firms conducted the trial of Action No. 1 before Mr. Justice Walter at Special Term, Part III of this Court. The trial consumed six weeks, in the course of which upwards of 4,800 pages of testimony were taken and 448 exhibits introduced in evidence. At the conclusion of the trial the Court rendered a decision covering 80 pages in which he sustained the plaintiffs' action against all the important defendants and a final judgment was entered against defendants Clarence K. Reynolds and William F. Woodward in favor of plaintiffs in the sum of $73,471.61 and against the firm of Prentice & Brady in the sum of $40,886.18. The judgment further directed that the defendants Clarence K. Reynolds, William F. [fol. 25] Woodward, Vincent E. Ferretti, William D. Boehm, Franklin E. Mayer, George K. Hyslop, Sartell Prentice, Jerome C. Brady, George Clayton and Calmur & Co. account to plaintiffs for all money and property of Investing wrongfully diverted to and all profits made by them and all damages sustained by Investing and referred the matter to Philip J. Dunn, Esq. to ascertain said profits

and damages. On April 28, 1941, your petitioners' firms collected $18,659.52 on account of the liability of the firm of Prentice & Brady and delivered the same to plaintiffs. As a result of your petitioners' firms' efforts, an agreement was reached with liquidator of the firm of Prentice & Brady which makes it quite likely that within a relatively short period plaintiffs will collect an additional sum of approximately $12,500. Your petitioners' firms have also collected the sum of $2,500 from the defendant Franklin E. Mayer in full payment of said defendant's liability, which was set forth in the fifth cause of action in Action No. 1, and have delivered the same to plaintiffs.

XI. Pursuant to the aforesaid judgment, your petitioners' firms conducted hearings before Referee Dunn to fix the accountability and liability of the defendants referred to above. In connection with the reference, further investigation of fact and law was made and a number of memoranda were submitted to the Referee. On the 20th day of September, 1941, the Referee filed his report, and on the 15th day of October, 1941, said report of the Referee was confirmed by order of Mr. Justice Walter; and on the 5th day of November, 1941, judgment was entered in [fol. 26] favor of plaintiffs and against defendants as follows:

1. Clarence K. Reynolds and William F. Woodward, jointly and severally	$1,106,713.92
2. William F. Woodward individually	1,225.00
3. Jerome C. Brady, George H. Clayton, Vincent E. Ferretti and Calmur & Co., jointly and severally	1,310,109.13
4. William D. Boehm	11,538.98
5. George K. Hyslop	3,914.82
6. Franklin E. Mayer	1,088,670.23

XII. Due to the inability of plaintiffs to obtain jurisdiction of defendants R. S. Reynolds and R. S. Reynolds, Jr. who resided in Virginia, plaintiffs commenced an action against said defendants and others in the United States District Court, Eastern District of Virginia, based in part upon the identical transaction involved in Action No. 1.

Your petitioners' firms assisted in the drafting of the Virginia complaint had made the issues parallel with those raised in the New York Action to the end that the proof in New York Action No. 1 would also sustain the Virginia action. A stipulation was entered into between plaintiffs' Virginia attorneys and the attorneys for defendants therein permitting any of the parties to introduce as evidence in said action proof adduced in Action No. 1 in New York. In effect the whole case prepared by petitioners' firms was made and is available to Virginia counsel for [fol. 27] the plaintiffs and said proof should constitute the case of plaintiffs in Virginia. No compensation is sought in this application for the services performed exclusively in connection with the Virginia litigation. Reference thereto is made in this petition because of its relevance to the value of the services rendered in New York Action No. 1.

XIII. In connection with the institution of Action No. 1 and the conduct thereof your petitioners' firms spent 8,814½ hours, of which 1,778¾ hours were spent by partners and 7,035¾ hours by associates. This compilation does not include time spent by petitioner Lawrence S. Greenbaum at the trial of this action before Justice Walter, and petitioners' firms do not seek compensation for such time.

XIV. As heretofore pointed out, Action No. 2 is concerned with certain breaches of trust and acts of negligence committed by Investing's directors in the period 1928-1932. Originally incorporated as a fourth cause of action in Action No. 1, these acts and omissions were, after the decision of the Court of Appeals already referred to, set forth in a new action begun May 29, 1940 on behalf of John Gerdes and James D. Carpenter, Jr. as Trustees of Reynolds Investing Co., Inc., Debtor. Process was served upon defendants Clarence K. Reynolds and William F. Woodward, but plaintiffs were unable to serve process upon defendant Richard S. Reynolds who remained outside of the jurisdiction.

XV. Thereafter defendants Clarence K. Reynolds and [fol. 28] William F. Woodward made certain motions to strike large portions of the complaint, and these motions were in all substantial respects denied by Mr. Justice Bern-

stein, whose order thereon was thereafter affirmed unanimously by the Appellate Division, First Department.

XVI. The acts complained of in Action No. 2 are as follows:

1. Sale of United States Foil Stock.

The Board of Directors of Investing was composed of the defendants and John W. Hanes, all of whom were at the same time officers of Investing. John W. Hanes resigned as an officer in April, 1930 and as a director in September, 1931. In 1928 Investing had in its portfolio a block of United States Foil Class B Common Stock. This stock had been previously split up four-for-one, and the new shares were traded in on the New York Stock Exchange. On October 30, 1928, defendants caused Investing to sell privately 4,000 shares of said stock for $12.50 per share and other valuable property. The $12.50 per share was received by Investing, but the other property was divided among the defendants. On the day of the sale the market value of said stock on the New York Stock Exchange was $44 to $44⅜ per share. The result of this private sale was that Investing was caused to lose more than $125,000. It is alleged that the sale was not made for any legitimate corporate purpose, but for the personal interest and pecuniary benefit of the defendants to enrich themselves at Investing's [fol. 29] expense. It is further alleged that the sale was secret, made without the knowledge of the co-director and officer Hanes, and concealed from the security holders of Investing.

2. Merger of Reynolds Brothers with Investing.

A number of breaches of trust were committed by the defendants in connection with the merger of Reynolds Brothers, Incorporated with Investing in 1930. Reynolds Brothers, Incorporated was 80 per cent owned by the defendants Richard S. Reynolds and Clarence K. Reynolds. It had the same officers and directors as Investing, and in addition, the personal attorney of the defendants Richard S. Reynolds and Clarence K. Reynolds. In order to protect the stock interest of the defendants in Reynolds Brothers, Incorporated which was threatened, and in order to obtain a means of collecting through Investing the sums

owed to them by Reynolds Brothers, Incorporated which were uncollectible, the defendants proposed a merger to the stockholders of both corporatons thereof. In connection with the proposed merger, the defendants wrote up the obligation of Reynolds Brothers, Incorporated to them from $340,641 to $425,000. They also inflated the value of the assets of Reynolds Brothers, Incorporated in order to profit personally by receiving a greater number of securities of Investing for their stock in Reynolds Brothers, Incorporated. Knowledge of both these acts was never conveyed to the stockholders of Investing, but on the contrary, the defendants represented to said stockholders that the merger would benefit them. As a result of the merger, the defendants received from Investing a large number of [fol. 30] shares of Investing in excess of the number they should have received and caused Investing to pay to themselves the sum of $425,000 with interest in purported payment of the obligation of $340,641.

3. Syndicate Operations.

The complaint alleges, as further breaches of trust by defendants, that they caused Investing to enter into, take over and retain a number of syndicate participations to the personal profit and benefit of defendants and resulting in substantial losses to Investing.

The preparation of the bill of complaint in this action required extensive examinations, with the aid of accountants, into many complicated and intricate transactions occurring from ten to twelve years prior to the date of their discovery.

In addition, your petitioners' firms cooperated with James D. Carpenter, Jr., one of the plaintiffs, in examinations under 21-A of the Bankruptcy Act held in New Jersey and in Virginia relating to and for the purpose of preparing Action No. 2. In addition to the examination of the factual questions, your petitioners' firms conducted extensive research into a number of questions of law connected therewith.

Issue was joined by the service of the answers of defendants Clarence K. Reynolds and William F. Woodward on December 31, 1940, a time in which your petitioners were actively engaged in the preparation and trial of Action No. 1.

In connection with the preparation of Action No. 2, your petitioners' firms spent 127¼ hours, of which 12 hours were spent by partners and 115¼ hours by associates.

[fol. 31] XVII. Some time after June 21, 1938, when the old Board of Directors of Investing resigned and a new Board, composed of Messrs. Vanderbilt, Stickel, Lynch and Rossi were designated pursuant to the arrangement approved by Judge Fake, your petitioners' firms were advised that Investing had in its possession certain fidelity bonds issued by Globe Indemnity Company covering the acts of its prior directors. Your petitioners were requested to advise the new Board of Directors whether the looting of Investing's treasury in December, 1937 and January, 1938 (forming the basis for Action No. 1) were covered by these fidelity bonds. Your petitioners' firms made an examination of the facts and applicable law and rendered a report to the Board of Directors. In addition, at the instance and request of the Board of Directors, they conferred with officials of the Globe Indemnity Company and others. After Messrs. Gerdes and Carpenter were designated Trustees of Investing pursuant to the order of Judge Fake described above, your petitioners, at the special instance and request of the Trustees prepared for filing with Globe Indemnity Company the appropriate proofs of claim as a condition precedent to the institution of action. On the 16th day of January, 1940, your petitioners' firms commenced an action by the service of a summons on Globe Indemnity Company. On the 6th day of June, 1940, the complaint was duly served. Issue was joined by the service of an answer on September 3, 1940. The case is now at issue. The services of your petitioners' firms in connection with the Globe Action consumed 76 hours, 35 minutes, of which 2 hours, 40 minutes were spent by partners, and 73 hours, 55 minutes by associates.

[fol. 32] XVIII. The foregoing constitutes merely a summary of the nature and extent of your petitioners' services to the plaintiffs in said actions. A more detailed statement of each item of service, together with the time spent thereon and of the disbursements made and necessarily incurred, is annexed hereto as Exhibit A.

XIX. Under the plan of reorganization of Investing, approved, confirmed and consummated, the Company is com-

pelled to keep available $300,00 of its assets to assure payment of expenses incurred in the prosecution of these claims.

XX. On June 3, 1941 your petitioners received from plaintiffs in said actions a letter, a copy of which is annexed hereto marked Exhibit B. In short, said letter advised your petitioners that they were no longer the attorneys for plaintiffs in Action No. 2 and the Globe Action, and that their tenure as attorneys in Action No. 1 was to terminate upon the entry of the judgment after the completion of the reference before Referee Dunn. The discharge of your petitioners was not based upon any claim of petitioners' neglect or wrongdoing, but solely upon the absolute prerogative of a client to change his attorney. In connection with the letter of discharge, plaintiffs asserted that they would request your petitioners to turn over certain materials and memoranda prepared or collected by your petitioners.

Exhibit C is a copy of a letter sent by your petitioners in answer to Exhibit B. Your petitioners stated therein that they would not grant the request until they were [fol. 33] relieved of their responsibilities and their fees and disbursements were paid.

XXI. Thereafter, on June 20, 1941, plaintiffs served upon your petitioners an order to show cause, returnable June 30, 1941, in the Federal District Court for the District of New Jersey, why an order should not be made directing your petitioners to turn over to plaintiffs, as Trustees of Investing, any and all books, papers, records and other data in your petitioners' possession pertaining to "any and all litigation on behalf of the debtor corporation or its Trustees, without prejudice to any motion or application which might be made" by your petitioners, "and to fix the amount of their fees and disbursements." Upon the return day of the motion your petitioners appeared and contested the jurisdiction of the Federal District Court to determine the application of the plaintiffs. Your petitioners' opposition was based upon the contention that since plaintiffs had, with the authority of the Federal Bankruptcy Court, commenced actions in the State Courts of New York, all incidents in connection with said actions, including the nature and extent of petitioners' possessory and charging liens and the enforcement thereof, were exclusively vested in the New York State Court.

After the argument of the motion before Judge Fake, the plaintiffs withdrew their motion upon certain terms and conditions set forth in a stipulation dated July 9, 1941, and "So Ordered" by the Court on or about July 10, 1941, a copy of which is annexed hereto, marked Exhibit D. Paragraph 3 of said stipulation provides that within a reasonable time after the entry of judgment upon the reference, [fol. 34] your petitioners will commence proceedings herein for the fixation of their liens, possessory and charging. It also provides that in conjunction therewith, petitioners will consent to the substitution of attorneys in their place and stead, upon such terms and conditions as this Court may fix. Your petitioners are now in possession of voluminous papers, records, data and other memoranda used or for use in connection with Action No. 1, Action No. 2 and the Globe Action.

Petitioners have received no compensation whatever for the foregoing services. Likewise, the disbursements referred to herein have not been paid.

Wherefore your petitioners pray that an order be made determining the extent of your petitioners' liens, both charging and possessory, in said actions, directing appropriate means for the enforcement thereof and the payment of the amount so determined and for such other and further relief as may be proper.

Dated: December 22, 1941.

Ethelbert Warfield, One of the Above Petitioners.
Lawrence S. Greenbaum, One of the Above Petitioners.

(The foregoing petition was verified December 22, 1941 by Ethelbert Warfield and Lawrence S. Greenbaum.)

[fol. 35] Note re Exhibit "A", Annexed to Petition of B. H. Inness Brown, et al.

This exhibit totaling 134 typewritten pages consisted of a summary statement of services rendered, based on diary entries.

(Omitted pursuant to stipulation.)

EXHIBIT "B", ANNEXED TO PETITION OF B. H. INNESS BROWN, ET AL.

McDermott, Enright & Carpenter

75 Montgomery Street

Jersey City, N. J.

June 3, 1941.

Messrs. Greenbaum, Wolff & Ernst, 285 Madison Avenue, New York, N. Y.

Messrs. Kellogg, Emery & Inness-Brown, 120 Broadway, New York, N. Y.

GENTLEMEN:

Re: Reynolds Investing Company Matters

After mature consideration, we have decided that it is our duty as Trustees to assume the burden ourselves of taking over, preparing and arguing the pending appeals and any additional appeals that may be taken from any judgment that may be entered as a result of the hearings before Referee Dunn. We shall also act directly in the efforts which are being made to collect against C. K. Reynolds, Woodward and others.

There has been consistent and persistent criticism by interested parties because of the duplication of effort in the [fol. 36] past conduct of the litigation. We cannot longer permit two important law firms to have joint charge of this litigation. The situation is obviously anomalous and wasteful. The statute as well as the Plan place the responsibility and control of the litigation in our hands and in the face of the criticism that exists, we feel compelled to take over all pending matters that are in your hands, except the conduct of the hearings before Referee Dunn.

Perhaps we should have done this long ago when the criticism first arose. We recognized however that you had already carefully investigated the facts and prepared the case, and that no savings in expense would result from your displacement prior to the conclusion of the trial. Such reasons no longer prevail, so we shall relieve you henceforth of the burden and responsibility of the litigation. This applies as well to the second cause of action now pending. We doubt that any further time should be put on this

cause of action in New York in view of the questionable responsibility of C. K. Reynolds and Woodward.

We shall expect you to conclude the hearings before Referee Dunn as our attorneys and are confident that you will give us your hearty cooperation in rendering any further service that may seem necessary or desirable. We shall not hesitate to call on you from time to time. We also are confident that you will make available to us any and all materials or memoranda that you may have prepared.

Sincerely yours, (Sgd.) J. Gerdes, James D. Carpenter, Jr., Trustees of Reynolds Investing Company, Inc.

JDC-GCB.

[fol. 37] EXHIBIT "C", ANNEXED TO PETITION OF B. H. INNESS BROWN, ET AL.

Kellogg, Emery & Inness-Brown

120 Broadway

New York

June 4, 1941.

James D. Carpenter, Jr., Esq., and John Gerdes, Esq.,
℅ Messrs. McDermott, Enright & Carpenter, 75 Montgomery Street, Jersey City, N. J.

DEAR SIRS:

This will acknowledge receipt of your letter of June 3.

We have been retained to prosecute these litigations by the corporation and the retention was approved by Judge Fake. Why you should presume to overrule Judge Fake or to assume that your judgment on the question of what you call "duplication" is superior to his, is not clear. In so far as the fact that these litigations are in the joint charge of our two firms is concerned, you are well aware that there never was any intention other than to render a single bill.

It is our view that such duplication as may have existed has been due to the fact that you gentlemen have departed from your functions as clients and have attempted, in many instances without prior notice to us, to act as your own attorneys. However, if, as you assume, there has been any

duplication between the undersigned, we fail to see how such duplication would be decreased by the substitution of the firms of McDermott, Enright & Carpenter and Gerdes [fol. 38] & Montgomery for our firms. In fact any such substitution necessarily requiring the new attorneys to study the record, would really be anomalous and wasteful.

Nevertheless, realizing as we do that your real desire is to take over the additional work necessary to ensure retention of the successes which we have achieved, we are prepared to accede to your wishes, provided:

1. We are relieved of our responsibilities, and

2. Our fees and disbursments to date are paid in full.

Mr. Lawrence S. Greenbaum and Mr. Ethelbert Warfield would be glad to discuss this matter with you. We cannot arrange such a meeting on Saturday but would be glad to meet with you at either ten or eleven o'clock on the morning of Monday, June 9th, at the office of Kellogg, Emery & Inness-Brown. We have chosen that date to accord with Mr. Gerdes' request.

Very truly yours, Kellogg, Emery & Inness-Brown.

CK:fw.

[fol. 39] EXHIBIT "D," ANNEXED TO PETITION OF B. H. INNESS BROWN, et al.

United States District Court, for the District of New Jersey

In Proceedings for Reorganization

In the Matter of REYNOLDS INVESTING COMPANY, INC., a Corporation, Debtor

STIPULATION

It is stipulated by and between the parties hereto as follows:

1. The motion of petitioners, John Gerdes and James D. Carpenter, Jr., returnable before this Court on June 30, 1941, for an order directing respondents Greenbaum, Wolff

& Ernst and Kellogg, Emery & Inness-Brown to turn over certain papers, be and the same hereby is withdrawn.

2. All papers, books, records and other data in respondents' possession pertaining to any and all litigation on behalf of the Debtor or petitioners shall remain in the possession of respondents (a) until the extent of their liens, if any, both charging and possessory, have been determined by the courts of New York, and payment of their fees and disbursements made, if such payment is made a condition for the releasing of such liens, if any; or (b) in the event that it should be finally determined that the courts of the [fol. 40] State of New York shall not make such fixation, then, until a final order of the appropriate court has been entered and complied with by petitioners.

3. Upon conclusion of the reference before Philip Dunn, Esq. in *Gerdes* v. *Reynolds;* et al., and the entry of judgment thereon, the relationship of attorney and client between petitioners and respondents shall terminate, and respondents will within a reasonable time thereafter commence proceedings in the state courts of New York for the fixation of their said liens, if any. Respondents will consent to the substitution of petitioners or other attorneys in place and stead of respondents in all pending actions on behalf of petitioners upon such terms and conditions as shall be fixed by the courts of New York, or if it shall be finally determined that said courts of New York shall not make such fixation and determination of their said liens, if any, then upon such terms and conditions as shall be fixed by the appropriate court and compliance therewith by petitioners.

4. Respondents will provide petitioners with copies of all law memoranda prepared by them not heretofore furnished.

5. Upon reasonable notice at any time, petitioners or such of their employees or associates as are designated by them will be permitted to examine in respondents' offices all exhibits, books, papers, documents or other data relating to the aforesaid litigation and to make copies or photostatic copies thereof; and respondents on reasonable notice, at the expense of the trustees, will produce at any trial or hearing [fol. 41] such exhibits, books, papers, documents or other data in their possession as petitioners may desire to offer in evidence.

6. Nothing in this stipulation or any acts taken hereunder shall constitute an abandonment or waiver in any respect by the respondents of their attorneys' liens, if any, or any other rights which they may possess under the laws of the State of New York, and all such rights are hereby reserved.

7. Nothing herein shall constitute a waiver of the rights of petitioners or respondents to question the jurisdiction of the courts of the State of New York, or the United States District Court for the District of New Jersey, with respect to the determination of the existence, nature or extent of respondents' liens and the payment of their fees and disbursements in connection with the aforesaid litigation.

Dated: New York, July 9th, 1941.

(Sgd.) John Gerdes, James D. Carpenter, Jr., Petitioners. (Sgd.) Greenbaum, Wolff & Ernst, Kel-
[fol. 42] logg, Emery & Inness-Brown, Respondents.

Dated: 10th, 1941.

So ordered.

(Sgd.) Guy L. Fake, United States District Judge.

In Supreme Court of New York, New York County

Answer of Trustees

State of New York,
County of New York, ss:

Answering the petition and application of B. H. Inness-Brown and others in the above-entitled matter, John Gerdes and James D. Carpenter, Jr., as Trustees for Reynolds Investing Company, Inc., Debtor, depose and allege as follows:

1. The applicants were duly appointed attorneys for Reynolds Investing Company, Inc., Debtor, by the United States District Court for the District of New Jersey by order dated August 1, 1938, and were instructed by said Court to bring the action in the New York Supreme Court which is referred to in their petition herein. After the Trustees were appointed in the reorganization proceedings, they were substituted in said New York action in place of

said Debtor, and applicants thereafter, with the approval [fol. 43] of said United States District Court, acted as the attorneys for the Trustees therein. As attorneys for the Debtor and its Trustees, applicants are subject to the exclusive jurisdiction of said United States District Court for the District of New Jersey and said Court has exclusive power to determine the amount of compensation to be paid to them out of the assets in the possession of said Court for services rendered under appointment by said Court.

2. The causes of action which applicants desire this Court to impress with a lien are assets in the possession of the United States District Court for the District of New Jersey and subject to its exclusive jurisdiction. Said United States District Court has never relinquished its possession of said causes of action.

3. The United States District Court for the District of New Jersey, by permitting the amounts of its claims against the defendants in such actions to be liquidated in the New York state courts, did not surrender possession of such causes of action; nor did it consent to the adjudication by the New York courts of claims or liens which might be asserted by applicants or others against such causes of action.

4. Applicants have never applied for, or received, permission from said United States District Court to use the New York courts to establish liens against said causes of action.

5. In accepting appointment by the United States District Court for the District of New Jersey to act as attorneys for the Debtor, and subsequently for its trustees, in reorganiza- [fol. 44] tion proceedings under Chapter X of the Federal Bankruptcy Act, applicants agreed that the amounts of their compensation should be determined by said Court. They further agreed that all statutes and Court rules regulating applications by attorneys for allowances for services in connection with the administration of estates under Section 77B or Chapter X of the Bankruptcy Act, should be applicable to them.

6. After their appointment, and at various times during and after the month of November, 1939, applicants agreed that the United States District Court for the District of New Jersey should fix the reasonable compensation to be

paid to them for the services which they now ask the New York courts to value.

7. The applicants constituting the firm of Greenbaum, Wolff & Ernst were the attorneys for the Langmuir Debenture Holders Committee in the reorganization proceedings of Reynolds Investing Company, Inc., Debtor, under Chapter X of the Bankruptcy Act, in the United States District Court for the District of New Jersey, until they were superseded in or about the month of October, 1940. They have been paid, by order of said United States District Court, the sum of $21,000 for their services and $1,305.79 for their disbursements as attorneys for said Committee.

8. The applicants constituting the firm of Kellogg, Emery & Inness-Brown were, and still are, the attorneys for the Dochez Preferred Stockholders Committee in said reorganization proceedings, and have been paid, by order of said United States District Court, the sum of $15,000 for [fol. 45] their services and $709.90 for their disbursements as attorneys for said Committee.

9. The applicants were originally appointed as attorneys for the Debtor to prosecute the actions in this Court, and were subsequently continued as attorneys therein for the Trustees, because they were the attorneys for the aforesaid Committees, which were the principal and dominating committees in the aforesaid reorganization proceeding.

10. On or about October 28, 1939 the Trustees proposed a plan of reorganization in said proceeding which contained the following provisions (italics and words in brackets supplied by us):

"V. Recognition of the Interests of Creditors and Stockholders in the Plan

"The plan contemplates that all reorganization debts and expenses, and all claims of creditors other than claims on old debentures, as finally allowed by the Court, will be paid immediately in full in cash."

"XI. Reservation of Claims

"All claims in favor of the Debtor or of the Debtor's estate not settled or adjusted in the reorganization proceed-

ings, or in the plan, or in connection with the consummation of the plan, shall be retained and enforced by the Trustees. The Company shall cooperate with and assist the [fol. 46] Trustees in every way in the prosecution and collection of such claims.

"The Trustees shall have full power to prosecute pending actions and proceedings involving such claims, and to bring additional actions or proceedings in the courts of any jurisdiction. They shall also have full power to employ, retain, or displace, attorneys or counsel representing them in any action or proceeding, whether such action or proceeding be pending at the time of the consummation of the plan or not. They shall not, however, have any power to discontinue, compromise or settle any action or proceeding without the express approval of the Court.

"The Court will retain continuing jurisdiction over such claims and the prosecution thereof, and over the Company, its books, records and papers, and the Trustees, in connection therewith, after the final decree in the reorganization proceedings. *The Court* [the United States District Court for the District of New Jersey] *will from time to time fix the reasonable compensation to be paid to the Trustees, and their attorneys or counsel, for services in the prosecution of such claims*, and the Company shall assume and pay the amount of such compensation as well as all other expenses incurred or paid by the Trustees in the prosecution, collection, or other disposition of the claims. If the value of the portfolio of the Company shall, at any time prior to a complete and final adjudication on the merits of all of the claims reserved to the Trustees, be $300,000 or less, the as- [fol. 47] sets of the Company shall not be further depleted by purchases or redemption of debentures or shares of preferred stock without order of the Court after a hearing upon notice to the Trustees. In such order the Court will specify the financial arrangements to be made by the Company for the payment of all expenses then already incurred in connection with the claims as well as such other expenses as may reasonably be necessary in the further prosecution thereof.

"The net proceeds ultimately resulting from the prosecution or other disposition of the claims will be paid to the Company."

"XIII. Approval, Acceptance, Confirmation and Consummation of the Plan.

"All costs and expenses of administration and all allowances which may be approved or made by the Judge, shall be paid in cash by the Trustees, or, after the consummation of the plan, by the Company."

"The Court shall retain jurisdiction over the assets dealt with in the plan, and over any and all persons, firms, or corporations to whom such assets may be transferred, and over all parties appearing in the reorganization proceedings, for the purpose of carrying out and giving effect to any and all provisions of the plan and the decree confirming the same."

11. Applicants approved the aforesaid provisions in or about the month of November, 1939, and have at all times [fol. 48] since said date approved similar provisions in revisions of said plan. They have, from time to time, urged the Court, the holders of debentures and shares of preferred stock and other interested parties, to approve and accept plans containing such provisions. They have never, directly or indirectly, expressed disapproval or lack of acquiescence with respect to the aforesaid provisions.

12. The plan which was finally confirmed and actually consummated in 1940 with the active support of applicants, contains the provisions quoted in paragraph 10 hereof. A copy of said plan is annexed hereto as Exhibit A.

13. The claim of applicants for compensation for the services set forth in their application is a reorganization debt and expense.

14. All of the services of applicants described in their petition and application herein were services in the prosecution of claims as to which the United States District Court retained jurisdiction in the provisions of the plan which are referred to in paragraphs 10 and 12 hereof.

15. After their appointment by the United States District Court for the District of New Jersey as attorneys for the Debtor to institute the action in which applicants rendered the services for which they seek compensation, said applicants, as attorneys for the Langmuir Debenture Holders Committee and the Dochez Preferred Stockholders

Committee, united with the attorneys for other interested parties in the preparation and submission to the United [fol. 49] States District Court of the order made and entered January 19, 1939 by said Court appointing deponents as Trustees. A copy of said order is annexed hereto as Exhibit B.

16. Applicants acquiesced and consented to all of the provisions of the order of the United States District Court for the District of New Jersey, dated June 17, 1940, which confirmed the plan of reorganization. A copy of said order is annexed hereto as Exhibit C.

17. No final decree has been signed or entered in the reorganization proceedings in the United States District Court for the District of New Jersey.

18. The United States District Court for the District of New Jersey and its Trustees in the reorganization proceedings have not at any time consented to the institution of this proceeding in the New York court, or to any other proceeding to enforce any lien upon the estate of the Debtor. No application has been made to said Court or its Trustees for permission to make the pending application.

19. Applicants have not complied with Section 62(d) and 247 of the Bankruptcy Act, and the procedure adopted by petitioners herein; and the papers submitted by them on this application, do not comply with the statutes and court rules regulating applications of attorneys for allowances for services in connection with the administration of corporations in reorganization proceedings under section 77B or Chapter X of the Bankruptcy Act.

[fol. 50] 20. Applicants and the Trustees have agreed that only facts bearing on the jurisdiction of the Court be submitted at this time. This affidavit is therfore limited to such facts.

21. The Trustees respectfully ask that this application be denied and that applicants be referred to the United States District Court for the District of New Jersey for a determination of the value of their claims and the enforcement of any liens which they may have.

John Gerdes, James D. Carpenter, Jr.

(Sworn to January 12, 1942.)

Exhibit "A", Annexed to Answer of Trustees

Plan of Reorganization

District Court of the United States,
For the District of New Jersey

In the Matter of Reynolds Investing Company, Inc., a Corporation, Debtor

In Proceedings for Reorganization

I. Nature of Proposed Plan

The plan of the Trustees proposes a complete liquidation of the assets of the Debtor under the control of the holders [fol. 51] of the old debentures, and a distribution of the proceeds of such liquidation among the holders of the old debentures, old preferred stock and old common stock according to their strict legal priorities.

The maturity date of the debentures will be April 1, 1946, instead of April 1, 1948, but it is contemplated that most or all of such debentures will be retired by purchase or redemption prior to 1946. Interest will continue to be payable semi-annually at the rate of 5% per annum.

No dividends are to be paid, and no shares of stock of any class are to be retired by redemption, until all the debentures shall have been paid or retired.

Holders of old preferred stock are to receive a distribution of $145 per share before any payment is to be made to holders of old common stock.

There is to be a dissolution of the Company on April 1, 1946, unless all of the debentures and shares of preferred stock shall have been paid or retired before such date. Even if all the debentures and preferred stock shall then have been paid or retired, the Company will be dissolved unless the holders of a majority of the shares of common stock shall vote against dissolution.

As the reorganized Debtor is not to operate as an active investment trust, its name is to be changed to "Reynolds Realization Corporation".

The plan proposes liquidation through the medium of a reorganized Debtor rather than through an adjudication in bankruptcy, because: (1) the extent of the solvency of the Debtor is uncertain, and a judicial determination of the

extent of such solvency would involve protracted litigation, [fol. 52] litigation, be expensive, and, in the end, be useless; (2) complete and satisfactory liquidation is a practical impossibility within the time ordinarily contemplated by bankruptcy or other liquidation through legal proceedings; (3) corporate management is more flexible and better able to meet unforeseen contingencies in a liquidation over a long period of time than is the case where the liquidation is managed by officers of a court; and (4) control of a liquidation which necessarily extends over a long period of time should be under the direct and immediate control of those primarily interested—the debenture holders and stock owners.

II. Present Financial Condition of Debtor

A. *Assets*

The principal assets of the Debtor (excluding cash balances aggregating approximately $30,000 on September 30, 1939) consist of:

(1) Causes of action in favor of the Debtor against its former officers and directors;

(2) Securities readily marketable; and

(3) Securities having no ready market or a market so thin that the holdings of the Debtor may not be sold within a reasonable period of time in the market.

The causes of action in favor of the Debtor are in a face amount in excess of $3,000,000. No accurate value can be placed upon these claims at this time.

The readily marketable securities had a market value of $1,048,155.50 as of January 19, 1939, and $1,083,341.50 as of September 30, 1939.

[fol. 53] The securities listed as being "not readily marketable" in the report of the Trustees dated August 8, 1939 (see Appendix C, Report, p. 67) were appraised by the Trustees as having a value of $2,026,703.77 as of January 19, 1939; on the same date, the nominal market value of these securities was $2,031,226.06 (including the Class A shares of the United States Foil Co., on which there are no market quotations, at $2 per share more than the market value of the Class B shares of the same corporation). These securi-

ties had a nominal market value of $1,996, 001.75 as of September 30, 1939.

B. *Outstanding Obligations and Stock*

The capital and debt structure of the Debtor is comparatively simple.

Claims against the Debtor aggregating $36,974.55 have been filed by creditors other than holders of old debentures. The validity of most of these claims is being disputed by the Trustees.

$3,439,900 in principal amount of old debentures, due April 1, 1948, and bearing interest at 5% per annum, are outstanding. No default has occurred in the payment of interest on these debentures. Interest up to and including October 1, 1939 has been paid. The April 1, 1940 interest will be paid, as authorized by court order.

There are 9,915 shares of old no par value $6 cumulative preferred stock outstanding which are entitled to $100 per share, plus unpaid cumulative dividends, in the event of involuntary liquidation. As of January 1, 1940, $45 per share of unpaid dividends will have accumulated. As of such date, therefore, or of any date prior to July 1, 1940, each share of [fol. 54] old preferred stock will be entitled, in an involuntary liquidation, to $145 in priority to any distribution to holders of shares of old common stock. (The plan gives a priority of $145 to shares of preferred stock because it is estimated that the plan will be confirmed after January 1, 1940, and prior to July 1, 1940.)

There are 1,787,859 shares of old $1 par value common stock outstanding, including shares reserved to exchange for old shares, scrip, and Reynolds Brothers Incorporated stock.

III. Definition of Terms

Each of the following terms when used herein shall have the meaning specified respectively unless a different meaning is clearly indicated by the context:

(1) *Debtor or Company:* Reynolds Investing Company, Inc., a Delaware corporation, the name of which is to be changed to "Reynolds Realization Corporation" upon the consummation of the plan.

(2) *Reorganization Proceedings:* The proceedings for the reorganization of the Debtor now pending under Chapter X of the Bankruptcy Act, in the United States District

Court for the District of New Jersey, entitled "In the Matter of Reynolds Investing Company, Inc., a Corporation, Debtor—In Proceedings for Reorganization."

(3) *Court:* The District Court of the United States for the District of New Jersey, or any judge or referee in bankruptcy, acting in the reorganization proceedings.

[fol. 55] (4) *Trustees:* John Gerdes and James D. Carpenter, Jr., as trustees of the Debtor in the reorganization proceedings, and their successor or successors, if any.

(5) *Plan:* This plan of reorganization and any modifications thereof.

(6) *Old Debentures:* The outstanding Twenty-Year 5% Gold Debentures, Series A, of the Debtor, due April 1, 1948, excluding debentures owned by the Debtor or the Trustees.

(7) *Debentures* or *New Debentures:* The old debentures modified as provided in this plan.

(8) *Old Trust Indenture:* The trust indenture dated as of April 1, 1928, between the Debtor and The Seaboard National Bank of the City of New York as trustee, and an indenture supplemental thereto dated July 1, 1928, under and pursuant to which the old debentures were issued.

(9) *Trust Indentre* or *New Trust Indenture:* The old trust indenture modified as provided in this plan.

(10) *Indenture Trustee:* The Commercial National Bank and Trust Company of New York, or its successor, as trustee under the trust indenture or the old trust indenture.

(11) *Old Preferred Stock:* The outstanding shares of cumulative $6 preferred stock without par value, of the Debtor, excluding shares owned by the Debtor or the Trustees.

(12) *Preferred Stock* or *New Preferred Stock:* The preferred stock of $10 par value, entitled in voluntary or involuntary liquidation to $145 per share, to be issued pursuant to the plan.

[fol. 56] (13) *Old Common Stock:* The outstanding shares of $1 par value common stock of the Debtor, excluding shares owned by the Debtor or the Trustees but including shares held or reserved to exchange for old shares, outstanding scrip certificates or shares of the capital stock of Reynolds Brothers Incorporated.

(14) *Common Stock* or *New Common Stock:* The common stock of 50¢ par value to be issued pursuant to the plan.

(15) *Voting Trust Agreement:* The voting trust agreement under which the shares of new preferred stock and new common stock are to be deposited in accordance with the terms of the plan.

(16) *Voting Trustees:* The persons designated as voting trustees in the voting trust agreement, and their successor or successors.

(17) *Class A Voting Trust Certificates:* The certificates, issued by the Voting Trustees pursuant to the voting trust agreement, which represent ownership interests in shares of preferred stock.

(18) *Class B Voting Trust Certificates:* The certificates, issued by the Voting Trustees pursuant to the voting trust agreement, which represent ownership interests in shares of common stock.

(19) *Value of the Portfolio:* The value of such securities owned by this Company (excluding its own issues and voting trust certificates representing such issues) as have an "over the counter" or other general market. The price of the last sale, or, in the absence of a sale, the last bid quotation, [fol. 57] shall be used to determine such value. All securities on which there shall have been no public sales or bid quotations within the preceding 30 days shall be eliminated in the calculation of the value of the portfolio, except that Class A shares of United States Foil shall, in the absence of public sales or quotations, be valued at $2 per share in excess of the market value of Class B shares of United States Foil.

(20) *Asset Value of Debentures:* The asset value of $1 of debentures shall be determined by deducting all the liabilities of the Company (excluding capital stock, surplus and debentures) from the cash on hand and the value of the portfolio of the Company, and then dividing the remainder by the amount of outstanding debentures.

(21) *Asset Value of Preferred Stock:* The asset value of each share of preferred stock shall be determined by deducting all the liabilities of the Company (including the principal and unpaid accrued interest on outstanding Debentures but excluding capital stock and surplus) from the cash on

hand and the value of the portfolio of the Company, and then dividing the remainder by the number of the outstanding shares of preferred stock.

IV. Proposed Recapitalization

The reorganized Company will have the following capitalization:

$3,439,900, principal amount, of 5% debentures, maturing April 1, 1946.

[fol. 58] 9,915 shares new preferred stock of $10 par value, entitled in voluntary or involuntary liquidation to $145 per share.

178,786 shares new common stock of 50¢ par value.

V. Recognition of the Interests or Creditors and Stockholders in the Plan

The plan contemplates that all reorganization debts and expenses, and all claims of creditors other than claims on old debentures, as finally allowed by the Court, will be paid immediately in full in cash.

Each holder of old debentures will receive an equal amount of new debentures.

The 9,915 shares of new preferred stock and the 178,786 shares of new common stock will be issued to voting trustees under a voting trust agreement which is more fully hereinafter described.

Each holder of shares of old preferred stock will receive a Class A certificate from the Voting Trustees giving ownership rights (except the right to vote) in an equal number of shares of new preferred stock. Such shares of new preferred stock will entitle the owners, to the extent to which the amount realized upon the liquidation of the assets of the Company leaves a surplus after payment in full of the claims of creditors and debenture holders, to receive $145 in cash for each share of preferred stock before any payment is made to any of the holders of common stock or of trust certificates representing shares of old common stock.

Each holder of shares of old common stock will receive [fol. 59] a Class B certificate from the Voting Trustees giving ownership rights (except the right to vote) in shares of new common stock in the proportion of one share of new common stock for each ten shares of old common stock.

These certificates will entitle the holders to their proportion of the net amount recovered upon the liquidation of all the assets of the Company after payment in full of the claims of creditors, debenture holders and holders of preferred stock, if a majority of the Class B certificate holders shall vote to dissolve the Company. If dissolution shall not be voted, holders of Class B certificates shall be entitled to the shares of the new common stock represented by their certificates.

If the plan is not accepted in writing by or on behalf of stockholders holding a majority of the shares of stock of which proofs have been filed and allowed, of any class, then in lieu of the provisions made herein for such class, adequate protection for the realization by them of the value of their equity, if any, in the property of the Debtor will be provided by appraisal by the Court and payment in cash of the value of their stock.

No such provision is made for the realization by the old debenture holders (which is the only class of creditors affected by the plan) of the value of their claims against the property dealt with by the plan and affected by their claims, for the reason that the acceptance of the plan by two-thirds of the old debenture holders who file individual proofs of claim and whose claims are allowed is essential to the confirmation of the plan.

[fol 60] VI. Management and Control

A. *Composition of Board of Directors*

The reorganized Company shall be managed by a board of directors of five members who shall exercise their powers subject to such restrictions and qualifications as may be set forth in the by-laws, the certificate of incorporation, and the trust indenture covering debentures.

The members of the board of directors during the first year following the consummation of the plan shall be as follows:

	NAME
Debenture Representatives	Dean Langmuir
Preferred Stock Representative	G. Vernor Rogers
Common Stock Representative	Samuel S. Rodman
	Richardson Morris
	Edwin H. Woarms

The foregoing directors shall serve until the annual meeting of the Company in 1941 and until the election and qualification of their successors.

B. *Election of Officers*

Immediately following their taking of office hereunder, the first board of directors shall elect a president, a vice-president, a secretary, and a treasurer, and such other officers as the by-laws may prescribe, to serve at the pleasure of said board of directors until the annual meeting of the [fol. 61] Company in 1941 and the election and qualification of their successors.

C. *Election of Directors*

At the annual meeting of the Company in 1941, and thereafter, the holders of new debentures shall have the right, to the exclusion of the holders of the preferred and common stoock, to elect three of the five directors of the company until the asset value of the outstanding debentures shall be more than 200% of the amount of principal and unpaid cumulated interest thereof and the principal amount of outstanding debentures shall be less than $750,000; in such event, and until all of the debentures shall have been paid or retired, the holders of debentures shall be entitled to elect two of the directors. The right of the holders of debentures to elect three directors shall again become effective from time to time whenever the asset value of the outstanding debentures shall be less than 200% of the amount of the principal and unpaid interest of such outstanding debentures, or if $500,000 in face amount of debentures shall not have been retired by purchase or redemption in the preceding calendar year.

Whenever the holders of debentures shall have the right to elect three directors, the holders of the preferred stock shall have the right to elect one director. When the holders of debentures shall be entitled to elect only two directors, the holders of preferred stock shall have the right to elect two directors. After all debentures shall have been retired by purchase or redemption, the holders of preferred stock shall have the right to elect three directors.

[fol. 62] So long as any debentures are outstanding, the holders of common stock shall be entitled to elect one director. After the retirement of all debentures by purchase

or redemption, and until all of the preferred stock shall have been retired by purchase or redemption, the holders of common stock shall have the right to elect two directors; thereafter all directors shall be elected by vote of the holders of common stock.

The rights of holders of debentures, preferred stock and common stock to elect directors shall be determined by the facts existing at the close of the preceding calendar year.

D. *Voting by Holders of Debentures*

Only registered owners of debentures shall be entitled to vote.

At elections of directors of the Company each holder of debentures shall be entitled to one vote for each $100 principal amount of debentures held by him multiplied by the number of directors to be elected by the holders of debentures and he may cast all of such votes for a single director, or may distribute them among the number to be voted for by debenture holders, or any two or more of them, as he may see fit. At other meetings at which the debenture holders may be entitled to vote, each holder of a debenture shall be entitled to one vote for each $100 principal amount of debentures held by him.

Holders of debentures may vote by proxy in manner similar to the voting by proxy of holders of shares of stock.

E. *Quorums at Meetings*

At all meetings, holders of debentures, shares of preferred stock and shares of common stock, shall vote as separate [fol. 63] classes. The presence, in person or by proxy, of the holders of at least 25% of the number or principal amount, respectively, of the outstanding shares or debentures of each class shall be required to constitute a quorum of such class, and such quorum shall be sufficient to take the action which the holders of such shares or debentures are entitled to take, whether or not a quorum of the holders of the other classes of such securities shall be present. In the absence of a quorum of any class of securities, a majority of the holders of such class of securities present shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the holders of the requisite number or amount of such class of securities shall be present in person or by proxy.

F. Vacancies in Board of Directors

If any vacancy shall occur among the representatives of any class of securities on the board of directors, such vacancy shall be filled by vote of the holders of the securities of such class.

G. Compensation to Officers, Directors and Employees

The board of directors shall fix all salaries and compensation to officers, directors and employees. No officer or director shall, however, in either or both capacities receive compensation in excess of $2,000 per annum unless he shall devote all of his time to the affairs of the Company; and no officer, director or employee, devoting all of his time to the affairs of the Company, shall receive compensation [fol. 64] in excess of $3,000, per annum. The holders of debentures may by vote, at a meeting upon due notice, authorize the payment of compensation in excess of the foregoing amounts.

VII. Limitations Upon Management

A. Sales of Securities

Except as otherwise provided in the following paragraphs hereof, the power of the board of directors to authorize the sale of securities shall be unrestricted.

The preferred and common shares of Stokely Brothers & Co., the common shares of Case, Pomeroy & Co., and the Class A shares of United States Foil Co., or any part of such shares, shall be sold only, (1) when the sale is authorized by the affirmative vote of four directors; or (2) when the sale of such shares, in whole or in part, is authorized by the affirmative vote of three directors at the following, or better, prices:

Stokely Bros. & Co., Common	$ 7⅞ per share
Stokely Bros. & Co., Convertible Preferred	18¾ per share
Case, Pomeroy & Co., Common	15 per share
United States Foil Co., Class A	14.34 per share

The foregoing prices shall in each case be diminished by an amount equal to the total of all dividends designated as "liquidating dividends" which may have been received after the date of this plan and prior to the sale of the shares.

Whenever any security in the portfolio of the Company (other than the preferred and common shares of Stokely [fol. 65] Brothers & Co., the common shares of Case, Pomeroy & Co., and the Class A shares of United States Foil Co.) shall have a market value, per bond or per share, of 125% or more of its value as of January 19, 1939, as appraised in the Trustees' report of August 8, 1939, the board of directors shall be required to take reasonable steps to sell such number of the bonds or shares, at such value of 125% or more, as will reduce the Company's holding to not more than 75% of the number of such bonds or shares held on January 19, 1939. When the market value reaches 150%, the Company's holding shall be reduced to 50% of its holding on January 19, 1939. Similarly, the holding shall be reduced to 25% when the market value reaches 175%, and be completely liquidated when a price of 200% of such value, or more, can be secured.

B. Investment of Funds

Investments of funds shall not be made except in securities of the Company, and investments in securities of the Company shall be made only as expressly authorized in this plan.

C. Loans to the Company

So long as any debentures or shares of preferred stock are outstanding, the Company shall not borrow money to purchase its own debentures or shares of stock or to pay for other investments or securities, and shall not at any time have outstanding loans aggregating more than $85,000, exclusive of debentures.

[fol. 66] VIII. Provisions as to Debentures

A. General

Subject to prior retirement by purchase or redemption, the principal of the debentures shall become due April 1, 1946. Interest at the present rate of 5% per annum, shall be payable every six months.

No "touch off" clause requiring the Company to redeem all of its outstanding debentures when its assets are less than a given percentage of its funded debt, shall be applicable to the new debentures, but upon the happening of

any of the following defaults by the Company, the Indenture Trustee shall be permitted to issue a declaration of default which shall cause the principal of all outstanding debentures to become due and payable immediately: (a) failure to pay interest on the debentures; (b) failure to take reasonable steps to sell securities as required by the last paragraph of division A of article VII of the plan; (c) violation of the provisions of division B of article VII of the plan as to investments; (d) borrowing money in violation of the provisions of division C of article VII of the plan; (e) failure to retire the required number of debentures or to have the cash or United States Government securities on hand to cover such debentures, as required by division D of article VIII of the plan; (f) failure to observe the prohibition upon the declaration or payment of dividends on any class of stock, or upon the purchase of Class B voting trust certificates representing shares of common stock, as set forth in the second paragraph of division A of article IX of the plan; and (g) failure to observe the conditions under which shares of preferred [fol. 67] stock may be purchased or redeemed, as set forth in divisions B and C of article IX of the plan. Written notice of a declaration of default shall be given by the Indenture Trustee to the Voting Trustees and to all holders of debentures, by mail. Notice by mail of a declaration of default shall be given promptly by the Voting Trustees to all holders of Class A and Class B voting trust certificates.

The Indenture Trustee shall give thirty days notice in writing by mail to the Company, and to the Voting Trustees and all holders of debentures, of any claim of default, and an opportunity to the Company during such period of correcting such default, before it shall issue its declaration of default, except as to the following defaults, as to which the Indenture Trustee shall issue a declaration of default without prior notice and without an opportunity to the Company of correction: (a) investment other than in securities of the Company; (b) borrowing money in excess of $85,000; (c) purchase or redemption of Class A voting trust certificates or shares of preferred stock before the retirement of all debentures; (d) purchase of Class B voting trust certificates; and (e) payment of any dividend on either the preferred or common stock. The Voting Trustee shall promptly mail notice of a claim of default to all holders of Class A and Class B voting trust certificates.

All debentures shall be registered.

The names and addresses of holders of debentures, and of the amount of debentures held by them respectively, shall be registered by the Company in a record kept at the places at which the Company's stock ledgers are kept and shall be open to the examination of every debentureholder and stockholder at the times and in the manner provided for the [fol. 68] examination of its stock ledgers by stockholders.

Holders of debentures shall have the same right of inspection of the books, accounts and records of the Company, including stock ledgers, and shall have all the other rights, which stockholders have or may have by reason of the provisions of the certificate of incorporation of this Company as amended or of the statutes of Delaware or any other state in which the Company does business.

The certificate of incorporation shall be amended only when the amendments have been approved by the affirmative vote of the holders of at least 75% of the principal amount of the debentures then outstanding and voting.

B. Purchase and Cancellation

When interest payment checks are mailed on or about the first days of April and October in each year to the registered owners of debentures, a notice shall be enclosed to the effect that holders may at any time tender their debentures for sale to the Company at a price not exceeding the redemption price. The notice shall state the asset value of the debentures as of a date within 10 days prior to the date of the notice, and shall also state that the tender must set forth the amount of debentures offered, the price or prices which will be acceptable, and that the tender will be good for a period of six months or such shorter period as may be specified. A form on which the tender may be made shall accompany the notice.

The Company may from time to time purchase debentures for cancellation, provided that it shall not pay for such [fol. 69] debentures more than the lowest of the following amounts: (1) the par amount of such debentures with accrued and unpaid interest; (2) 80% of the asset value of such debentures; (3) the price at which debentures may be purchased in the market; and (4) the price at which debentures may be purchased under unexpired tenders filed with the Company. Where the prices are the same, deben-

to debentures purchasable in the market.
tures offered upon tender shall be purchased in preference

C. Redemption

The Company shall have the right, from time to time, on any semi-annual interest payment date, to take up and pay any or all of the debentures then outstanding by paying the principal thereof with all interest accrued and unpaid to the date so fixed for prepayment. If only part of the outstanding debentures are to be redeemed, the debentures to be redeemed shall be determined by lot under the direction of the Indenture Trustee. The Company shall give written notice of its election to prepay all or any of the debentures to the Indenture Trustee at least thirty days prior to the day fixed for such prepayment. The Indenture Trustee shall mail, at least two weeks prior to the date fixed for prepayment, a notice in writing to the registered owner of each debenture called for prepayment, which notice shall contain the number and amount of the debenture which has been called and shall state that upon presentation of such debenture for cancellation at the office of the Indenture Trustee 100% of the principal of such debenture, with all unpaid accrued interest thereon, will be paid to the owner. [fol. 70] On or before the date fixed for payment, the Company shall deposit with the Indenture Trustee to the credit of the owner of each debenture called for redemption a sum of money equal to the principal and unpaid accrued interest thereon to the date fixed for redemption, which deposit shall operate as full payment of the debenture as between the Company and the owner thereof. Such deposits in the hands of the Indenture Trustee shall draw no interest. The owner shall look for payment of the debenture and interest thereon only to the sum so deposited in the hands of the Indenture Trustee, and in no event to the Company. The sum so deposited shall be paid by the Indenture Trustee to the owner thereof upon the presentation and delivery to it of the debenture with properly executed instruments of assignment or cancellation.

Any and all debentures paid and delivered as aforesaid shall be cancelled immediately by the Indenture Trustee and delivered so cancelled to the Company.

The right of the Company to redeem debentures, as herein provided, shall not be exercised unless the Company is unable to purchase the debentures in the open market or else-

where at the redemption price or less; nor shall such redemption right be exercised at any time as to less than all the outstanding debentures when the asset value of the outstanding debentures shall be less than 125% of the principal and unpaid accrued interest of such outstanding debentures.

D. Compulsory Retirement

On or before April 1, 1941, the Company shall (by purchase, redemption, or otherwise) retire at least $350,000 [fol. 71] in principal amount of its debentures; it shall retire at least $900,000 in principal amount of debentures on or before April 1, 1942; and on or before April 1, 1943, it shall retire a sufficient number of its debentures to leave outstanding on said date a total principal amount of not more than $1,719,950 of such debentures. By April 1, 1945, the outstanding debentures shall be reduced to $687,980, or less, in principal amount. If on any of said dates the outstanding and unretired debentures shall be in excess of the principal amounts which would have been outstanding and unretired if the foregoing retirements had been made, the Company shall not be in default if it shall then have on hand United States Government securities and cash in an amount equal to the principal and accrued interest on the outstanding debentures in excess of such amounts. In such event, sufficient in amount of Government securities and cash shall be set aside to enable the purchase or redemption of the necessary amount of debentures. Securities and cash so set aside shall be used for no other purpose.

IX. Provisions as to Preferred Stock

A. General

The shares of preferred stock shall have a par value of $10 per share. The holders thereof shall be entitled, in the event of redemption, or voluntary or involuntary dissolution or liquidation, to $145 per share before any sum shall bet paid to or any assets distributed among the holders of the common stock. They shall also have the voting rights elsewhere set forth in this plan. In all other respects the rights and privileges of holders of preferred stock shall [fol. 72] be the same as those of the holders of common stock.

No dividends shall be paid on the shares of any class of stock of the Company until all of its debentures and shares of preferred stock shall have been paid, cancelled or retired. No shares of common stock and no voting trust certificates representing such shares shall be purchased by the Company until after the payment, cancellation or retirement of all debentures and shares of preferred stock. Shares of preferred stock and voting trust certificates representing such shares shall not be purchased or redeemed except as hereinafter provided.

B. Purchase of Class A Voting Trust Certificates

Whenever all of the debentures shall have been paid, cancelled or retired, the Company may from time to time purchase Class A voting trust certificates representing shares of its preferred stock, provided that the purchase price of such Class A voting trust certificates shall not be greater than the lowest of the following amounts: (1) $145 for each share of preferred stock represented by the certificates purchased; (2) 80% of the asset value of the shares represented by the certificates; (3) the prices at which such Class A voting trust certificates may be purchased in the market; and (4) the prices at which such Class A voting trust certificate may be purchased under unexpired tenders filed with the Company. Where the prices are the same, Class A certificates offered upon tender shall be purchased in preference to certificates purchasable in the market.

After all of the debentures shall have been retired, the Company shall mail to the registered owner of each Class [fol. 73] A voting trust certificate a notice to the effect that he may at any time tender all the shares represented by his certificate, or any part thereof, for sale to the Company at a price not exceeding $145 for each share of preferred stock. Semi-annually thereafter, similar notices shall be mailed. The notice shall state the asset value of each share of the outstanding preferred stock as of a date within 10 days prior to the date of the notice, and shall also state that the tender must set forth the number of shares represented by the certificates offered, the price or prices which will be acceptable, and that the tender will be good for a period of six months or such shorter period as may be specified. A form on which the tender may be made shall

accompany the notice. No purchase of Class A voting trust certificates shall be made by the Company at any time unless a notice similar to the foregoing shall have been mailed within seven months immediately preceding such purchase.

All Class A voting trust certificates purchased or otherwise acquired by the Company shall be surrendered to the Voting Trustees for cancellation. Upon receipt of such certificates the Voting Trustees shall transfer to the Company, for retirement, the shares of preferred stock represented by the Class A certificates surrenderd.

C. Redemption of Preferred Stock

The Company shall have the right, from time to time, to redeem any or all of the shares of preferred stock represented by Class A voting trust certificates, by paying the sum of $145 for each share of preferred stock called for redemption. If only part of the outstanding shares of preferred stock are to be redeemed, the shares to be re- [fol. 74] deemed, and the voting trust certificates representing such shares, shall be determined by lot under the direction of the board of directors. The Company shall give at least 30 days written notice to the Voting Trustees of its election to redeem such shares, and shall mail, at least two weeks prior to the date fixed for redemption, a notice in writing to each registered owner of a Class A voting trust certificate which represents shares called for redemption. Such notice to the certificate holder shall specify the number of shares of preferred stock represented by his voting trust certificate which have been called for redemption and state that upon presentation of his voting trust certificate at the office of the Company, on or after the date fixed for redemption, the sum of $145 will be paid for each share called for redemption. When some but not all of the shares of preferred stock represented by a voting trust certificate are called for redemption, payment shall be made for the shares to be redeemed and a new voting trust certificate shall be issued by the Voting Trustees for the shares not called for redemption.

The shares called for redemption, and the Class A voting trust certificate representing such shares, shall not be deemed to be outstanding for any purpose whatsoever from and after the date fixed for redemption, and the rights of the holders of the Class A voting trust certificates representing

shares called for redemption shall be limited solely to the right to receive payment of the sum of $145 for each share called for redemption and a new voting trust certificate for the shares not called for redemption.

At its election the Company, prior to the date fixed for redemption, may deposit the sum of $145 for each share [fol. 75] of preferred stock called for redemption, in trust for the holders of the Class A voting trust certificates representing such shares, with a bank or trust company doing business in the City of New York, and having a capital, surplus and undivided profits of at least $5,000,000. In such case the redemption notice shall (a) state that such deposit has been made, (b) specify such bank or trust company as the place of payment of the redemption price, and (c) call upon the certificate holders to surrender the certificates representing such of the shares as have been called for redemption on or after the redemption date fixed in the notice.

There shall be no redemption of shares of preferred stock while any debentures are outstanding; nor, as to less than all the outstanding shares of preferred stock, when the asset value of each share of preferred stock shall be less than $185; nor unless the Company shall be unable to purchase Class A voting trust certificates in the open market or elsewhere for $145 or less for each share represented.

X. Provisions as to Voting Trust

All of the shares of the new preferred and common stock shall be deposited with Arthur T. Vanderbilt and Charles F. Lynch, as Voting Trustees, under a trust agreement containing appropriate terms to give effect to all of the provisions of this plan. In addition to such terms, the voting trust agreement shall continue the following specific provisions:

(1) The Voting Trustees shall vote all deposited shares.

[fol. 76] (2) The Voting Trustees, upon receipt of certificates of shares of the old preferred and common stock with proper proof of ownership, shall issue to each owner of old preferred stock a Class A voting trust certificate representing an equal number of the shares of the new preferred stock, and to each holder of old common stock a Class B

voting trust certificate representing one share of new common stock for each ten shares of old common stock.

(3) The Voting Trustees shall arrange for separate meetings of the holders of Class A and Class B certificates to be held prior to the annual stockholders' meetings of the Company in 1941, and thereafter. At such meetings the Class A certificate holders shall designate the directors to be elected by vote of the shares of new preferred stock and the Class B certificate holders shall designate the directors to be elected by vote of the shares of the new common stock. Certificate holders shall be permitted to vote by proxy.

(4) At the annual meetings of the stockholders of the corporation, the Voting Trustees shall vote the shares of new preferred stock for the election of such directors as shall have been designated by the holders of Class A certificates and shall vote the shares of new common stock for the election of such directors as shall have been designated by the holders of Class B certificates.

(5) Whenever, from time to time, the Company shall deliver Class A certificates to the Voting Trustees for cancellation, the Voting Trustees shall transfer to the Company such number of shares of new preferred stock as may be [fol. 77] equal to the number of shares represented by the Class A certificates surrendered for cancellation. Shares of the new preferred stock so delivered to the Company must be cancelled and retired forthwith by the Company.

(6) If any debentures or shares of new preferred stock are outstanding on April 1, 1946, the Voting Trustees shall, as holders of the legal title of all the outstanding shares of the Company, execute and file the consent in writing to a dissolution of the Company which is provided for under Section 39 of the Delaware Corporation Law, and shall take such other and further steps as may be necessary to dissolve and wind up the affairs of the Company in accordance with the laws of Delaware.

(7) If, as provided in the trust indenture, the Indenture Trustee shall declare the principal of all debentures due and payable because of a default, and shall notify the Voting Trustees in writing of such declaration of default, the Voting Trustees shall forthwith file the consent of dissolution under Section 39 of the Delaware Corporation Law

and take such other and further steps as may be necessary to dissolve and wind up the affairs of the Company in accordance with the laws of Delaware.

(8) If all debentures and shares of new preferred stock are retired on or before April 1, 1946, the Voting Trustees shall within a reasonable period of time after such retirement call a meeting of the holders of the Class B certificates to vote on the question of whether the Company should be dissolved. The presence in person or by proxy of the holders [fol. 78] of certificates representing a majority of the shares of new common stock then outstanding shall be required to constitute a quorum at such meeting. If the holders of certificates representing a majority of the shares represented at the meeting shall vote against dissolution, the Voting Trustees shall forthwith terminate the trust and distribute to the holder of each Class B voting trust certificate the number of shares of new common stock represented by such certificate; otherwise the Voting Trustees shall file the consent and take the other steps necessary to dissolve the Company, as provided in the preceding paragraph hereof. Any shares remaining with the Voting Trustees after distribution of the shares of common stock to the holders of Class B voting trust certificates shall be surrendered to the Company for cancellation and retirement. The Voting Trustees shall issue participating certificates representing fractions of shares, but the holders of such certificates shall be entitled to receive certificates for the new common stock of the Company only when assembled in full share amounts. The Company shall not be required to issue certificates for fractional shares of its new common stock.

(9) Each Voting Trustee shall receive not less than $250 or more than $500 per annum in full for all services rendered, the full amount of compensation to be fixed by the board of directors of the Company.

(10) Depositary, transfer, and other agents may be designated by the Voting Trustees, and such depositary, transfer, or other agents shall be entitled to reasonable compensation. The compensation of the Voting Trustees and of [fol. 79] their depositary, transfer and other agents, and all other expenses of the Voting Trustees and of the voting trust, shall be paid by the Company.

(11) The Voting Trustees, or either of them, may be removed at any time, with or without cause, and their successor or successors may be appointed, by the concurrent vote of the holders of a majority of the shares represented by the voting trust certificates of each class then outstanding.

XI. Reservation of Claims

All claims in favor of the Debtor or of the Debtor's estate not settled or adjusted in the reorganization proceedings, or in the plan, or in connection with the consummation of the plan, shall be retained and enforced by the Trustees. The Company shall cooperate with and assist the Trustees in every way in the prosecution and collection of such claims.

The Trustees shall have full power to prosecute pending actions and proceedings involving such claims, and to bring additional actions or proceedings in the courts of any jurisdiction. They shall also have full power to employ, retain, or displace, attorneys or counsel representing them in any action or proceeding, whether such action or proceeding be pending at the time of the consummation of the plan or not. They shall not, however, have any power to discontinue, compromise or settle any action or proceeding without the express approval of the Court.

The Court will retain continuing jurisdiction over such [fol. 80] claims and the prosecution thereof, and over the Company, its books, records and papers, and the Trustees, in connection therewith, after the final decree in the reorganization proceedings. The Court will from time to time fix the reasonable compensation to be paid to the Trustees, and their attorneys or counsel, for services in the prosecution of such claims, and the Company shall assume and pay the amount of such compensation as well as all other expenses incurred or paid by the Trustees in the prosecution, collection, or other disposition of the claims. If the value of the portfolio of the Company shall, at any time prior to a complete and final adjudication on the merits of all of the claims reserved to the Trustees, be $300,000 or less, the assets of the Company shall not be further depleted by purchases or redemptions of debentures or shares of preferred stock without order of the Court after a hearing upon notice to the Trustees. In such order the Court will

specify the financial arrangements to be made by the Company for the payment of all expenses then already incurred in connection with the claims as well as such other expenses as may reasonably be necessary in the further prosecution thereof.

The net proceeds ultimately resulting from the prosecution or other disposition of the claims will be paid to the Company.

XII. Miscellaneous Provisions

A. Prohibition of Non-Voting Stock

The certificate of incorporation of the Company shall provide that the Company shall be prohibited from issuing non-voting stock.

[fol. 81]

B. Reports of Company

Detailed reports of the Company, including profit and loss statements, balance sheets, and portfolio statements, shall be prepared in accordance with sound business and accounting practice, and copies thereof shall be mailed semi-annually to all holders of debentures and of Class A and Class B voting trust certificates.

C. Failure to Surrender Old Claims and Securities

Creditors, other than holders of debentures, who fail to file, assign, transfer, or release their claims, and holders of debentures or shares of old preferred and common stock who fail to present or surrender their securities, within such time as may be fixed in the final decree in the reorganization proceedings (which time shall not be sooner than five years after the final decree), shall lose all right to participate in the distribution under the plan, and the securities and other rights to which they would otherwise be entitled shall revert or pass to the Company.

D. Assumption of Tax Liabilities

The Company shall assume and agree to pay in full all tax liabilities owing by the Debtor or the Trustees to the United States of America or to any State. The claims of the United States shall have the same priority and preference over claims of other creditors of the reorganized

Debtor, with respect to the assets thereof, as would lie against the assets of the Debtor had the reorganization proceedings not intervened, and the United States of America shall be granted the same remedies against the reorganized [fol. 82] Debtor and its assets with regard to the collection of such liabilities as it had against the Debtor before reorganization. All statutes of limitation upon the collection of such claims shall be suspended during the pendency of the reorganization proceedings.

E. Form of Debentures and Voting Trust Certificates

The debentures and voting trust certificates to be issued to the holders of old debentures and old preferred and common stock shall clearly state the limitations upon and the nature of the future operations of the Company, and shall set forth the contingent nature of the future participation of the holders of the Class A and Class B voting trust certificates in the Company. The voting trust certificates shall be designated, respectively, as "Class A Liquidation Voting Trust Certificates" and "Class B Liquidation Voting Trust Certificates".

XIII. Approval, Acceptance, Confirmation and Consummation of the Plan

This plan shall be approved, accepted, confirmed and consummated in accordance with the provisions of Chapter X of the Bankruptcy Act, as amended. After confirmation, the plan shall be consummated by the Trustees acting under the supervision of the Court.

The Trustees shall have full power and authority to take any and all steps deemed by them to be necessary or proper to effectuate or to consummate the plan. Consistent with the terms of the plan and all applicable provisions of law, [fol. 83] they shall determine the terms, provisions and covenants to be omitted, added, changed or retained in the certificate of incorporation and the by-laws of the Company, the trust indenture, and all other instruments, documents or papers necessary or deemed by them desirable to consummate and carry out the plan or any provision thereof, and they shall determine the terms and provisions of the Voting Trust Agreement.

The Trustees may construe the plan, and their construction thereof or action thereunder shall be final and

conclusive. They may supply any defect or omission or reconcile any inconsistency in the terms of the plan in such manner or to such extent as may be necessary in their opinion.

The Company shall enter into any and all agreements and execute any and all documents which the Trustees or the Court may find necessary or proper in connection with carrying the plan into execution.

All costs and expenses of administration and all allowances which may be approved or made by the Judge, shall be paid in cash by the Trustees, or, after the consummation of the plan, by the Company.

The Company shall indemnify the Trustees, the Indenture Trustee, and the Voting Trustees against all loss, costs, liability and expense arising out of the administration of the reorganization proceedings, the plan, or any transaction required or authorized by the plan or by the Court in connection with the plan.

The Court shall retain jurisdiction over the assets dealt with in the plan, and over any and all persons, firms, or corporations to whom such assets may be transferred, and over all parties appearing in the reorganization proceedings for the purpose of carrying out and giving effect to [fol. 84] any and all provisions of the plan and the decree confirming the same.

EXHIBIT "B", ANNEXED TO ANSWER OF TRUSTEES

ORDER APPROVING PETITION IN REORGANIZATION
UNITED STATES DISTRICT COURT, District of New Jersey

In Proceedings for Reorganization

In the Matter of REYNOLDS INVESTING COMPANY, INC., a Corporation, Debtor

This matter being opened to the Court by Furst & Furst, Esquires, attorneys for petitioning creditors herein, upon the return of an order to show cause issued herein on the 18th day of May, 1938, hearings on which have been continued until this date, and it appearing that (1) the involuntary petition filed herein on May 18, 1938, by C. Suydam

Cutting, Clara B. Prince and Mary Van Pelt Bryan, three petitioning creditors having provable claims against the Debtor, and the amended involuntary petition of said petitioning creditors together with said order to show cause were duly served upon Debtor; (2) the Debtor, by Chadbourne, Hunt, Jaeckel & Brown and Merritt Lane, Esq., as [fol. 85] attorneys, filed an answer to said petitions and certain affidavits and exhibits; (3) James H. McIntosh, et al., certain preferred stockholders, and Everett L. Abernathy, et al., certain common stockholders, by Carter, Ledyard & Milburn, and Pitney, Hardin & Skinner, filed answers to the said involuntary petition, and Lum, Tamblyn & Fairlie and Blake and Voorhees having been duly substituted as attorneys for said James H. McIntosh, et al., preferred stockholders; (4) A Committee of Debenture Holders, represented by McCauley, Spiegelberg, Davis & Gallagher, and Frazer, Stoffer & Jacobs, having appeared; (5) A committee of Debenture Holders of which Dean Langmuir is Chairman, represented by Greenbaum, Wolff & Ernst, and a preferred Stockholders' Committee of which Alfred E. Dochez is Chairman, represented by Kellogg, Emery & Inness-Brown, and a Stockholders' Committee, represented by Percival E. Jackson, requested the Court to grant the relief prayed for by the petitioning creditors; (6) Albert E. Olson, Receiver of First Income Trading Company appearing by McCarter & English (George W. C. McCarter, Esq.) filed an answer to said involuntary petition; (7) Ralph E. Lum, of Lum, Tamblyn & Fairlie, having been present in open Court on behalf of certain preferred stockholders; (8) The Security Exchange Commission having appeared herein by Joseph L. Weinert, Edmund Burke, Jr., and J. Anthony Panuch, its attorneys; (9) a stipulation was entered into in open Court by all the parties who appeared herein, providing, among other things, that the answers heretofore filed to the said involuntary petition and amended involuntary petition be withdrawn, and that the Court approve of the petition and amended petition as herein filed in accordance [fol. 86] with Chapter 10 of the Bankruptcy Act of 1938 (Chandler Act); and no one appearing in opposition and no cause being shown to the contrary:

It is on this 19th day of January, 1939, on motion of Furst & Furst, attorneys aforesaid,

Ordered, adjudged and decreed:

1. That the applications for leave to withdraw each of the answers filed herein, be and the same are hereby granted.

2. That the petition and amended petition filed herein be, and they hereby are approved as duly and in good faith filed under Chapter 10 of the Bankruptcy Act of 1938, and as amended (Chandler Act).

3. That said petition and amended petition filed herein comply with the requirements of Chapter 10 of the Bankruptcy Act of 1938, and as amended (Chandler Act).

4. That by reason of the facts duly set forth in said petition and amended petition, relief under Chapter 10 of the Bankruptcy Act of 1938, and as amended (Chandler Act), is required, and that there is no adequate remedy except by the granting of such relief.

5. That it is necessary that Trustees be appointed for Debtor's estate.

6. That John Gerdes, No. 102 Maiden Lane, New York City, and James D. Carpenter, Jr., No. 75 Montgomery Street, Jersey City, New Jersey, be, and they are hereby [fol. 87] appointed Trustees of the Debtor's estate. The said Trustees, upon filing a bond, as hereinafter in this order provided, shall have all the title and shall exercise, subject to the control of this Court, and pursuant to the provisions of Chapter 10 of the Bankruptcy Act of 1938, and as amended (Chandler Act), all of the powers of a Trustee appointed pursuant to Section 44 of the said Bankruptcy Act and the same powers as those exercised by a receiver in equity to the extent consistent with Chapter 10 of the said Bankruptcy Act, and subject to the authorization and control of the Court, the power to operate the business of the Debtor until such time as the Court shall otherwise prescribe.

7. Without in any way limiting the generality of the powers and authority of the Trustees elsewhere in this order provided and to the extent consistent with Chapter 10 of the Bankruptcy Act of 1938, and as amended (Chandler Act), upon filing the bond provided for herein, the Trustees herein appointed be, and hereby are:

(a) Authorized and directed, pending further order of the Court in the premises, to take possession of and to run, manage, maintain, operate, keep in proper repair the assets, properties and business of the Debtor, real, personal or mixed, tangible or intangible, of whatsoever kind and description, and wheresoever situated, whether in this State, judicial district, and whether in the United States of America or elsewhere, and to manage, operate and conduct its business, and to this end to exercise its authority, franchises, and discharge all duties obligatory upon it, and [fol. 88] discharge and fix the compensation of all agents and employees, to collect and receive the income, rents, revenues, tolls, issues and profits of said assets, properties and business; to collect all outstanding accounts and all dividends and interest on securities belonging to it and to do all and every act necessary to carry on the business of the Debtor as an entirety, and exercise all and singular its rights, authorities, franchises and privileges in such manner, and to such extent as in the judgment of the Trustees may seem necessary or desirable;

(b) Authorized and empowered to prosecute, become party to, intervene in, compromise or defend suits and actions at law, or in equity, or otherwise in which the Debtor may have had or has any interest as plaintiffs, defendants or otherwise, and to be substituted as parties therein in an action heretofore commenced, pursuant to the order of this Court, and to proceed with said action in accordance with the terms of said order.

(c) Authorized and empowered to continue the operation of the business of the Debtor, as they shall determine, and to that end to employ and discharge and pay the compensation, salaries and wages of such officers, agents, employees and others heretofore accrued or to accrue as they deem necessary or advisable in connection with the custody, control, preservation, operation and management of the properties and business constituting the Debtor's estate, or [fol. 89] necessary or desirable to avoid detriment to the working organization of the business; to perform existing contracts, including leases of the Debtor, to the extent that performance thereof may seem to them desirable; to purchase and sell for cash, or on credit, any merchandise, or other property, real or personal, and to enter into and to

perform other contracts, in the regular course and conduct of the business of the Debtor, or otherwise; to let, sub-let, contract for the use of, turn to account or otherwise dispose of, buildings, public space, or other space owned, leased or operated by the Debtor, and any other property of any kind in relation thereto, or in connection therewith; to engage in any project deemed by the Trustees to be necessary, desirable or helpful in the promotion of the Debtor's business;

(d) Shall be and hereby are vested, without the doing of any further act, with full right, title and interest to all bank accounts, custody accounts, safe deposit boxes, if any, ownership of, or rights to which are now vested in the Debtor, and the respective depositaries shall forthwith transfer all such accounts and safe deposit boxes into the names of the Trustees as such appointed in this proceeding.

8. Within 5 days from and after the entry of this order, the said Trustees shall execute and file with the Clerk of this Court, a joint and several Surety Company bond to be approved by this Court, for the benefit of the United States, [fol. 90] in the sum of Fifty Thousand Dollars ($50,000.00), conditioned to the effect that the said Trustees will well and truly perform the duties of their office, and duly and faithfully account for all moneys and properties whatsoever that may come within their hands and abide by and perform all things which they shall be directed by this Court to perform.

9. The Trustees shall on or before the 10th day of February, 1939, give notice to creditors and stockholders of the Debtor, as same may appear upon the books of the Debtor by (a) mailing a copy to such creditors (including all known debenture holders, and their attorneys or attorneys-in-fact), stockholders at their respective addresses appearing on such books, and to the Commercial National Bank & Trust Company, Successor Indenture Trustee, and to the Securities and Exchange Commission; and (b) causing a publication to be made in the "Jersey Journal", a newspaper published and having a general circulation in the City of Jersey City, New Jersey, that a hearing will be held herein before this Court at the Federal Building, Newark, New Jersey, on Friday, the 17th day of March

1939, at ten-thirty o'clock in the forenoon of that day, or at such time or times to which any adjournment may be taken, for the purpose of hearing objections, if any, to the retention in office of the Trustees upon the ground that they are not qualified or are not disinterested, as provided in Section 158, Chapter 10, of the Bankruptcy Act of 1938 (Chandler Act).

10. That all of the expenses of administration as may [fol. 91] be fixed and determined by the Court in this proceeding, shall constitute a prior charge upon the Debtor's estate and shall be paid by the Trustees or their successor or successors, in accordance with the orders of the Court in this proceeding, without further order herein.

11. That all creditors, stockholders, and all persons claiming or acting by, through or under them, and all sheriffs, marshals and other like officers, agents, attorneys, solicitors, representatives, and employees, and all other persons, firms, associations and corporations, are hereby enjoined and restrained from instituting, continuing or prosecuting any action at law or suit or proceeding in equity or any other proceeding against the Debtor in any court of law or equity, or before any association, organization, or arbitration or Referee or umpire or other court or tribunal or otherwise, or from executing or issuing, or causing the execution or issuance, or the issuing out of any Court or any public office of any writ, process, summons, attachment, subpoena, replevin, execution or other proceeding, for the purpose of impounding or taking possession of, or interfering with the property constituting the Debtor's estate, or attempting to take into possession any part of the property constituting the Debtor's estate wheresoever located, whether in this state, judicial district, United States or elsewhere; and all other persons, firms, associations and corporations, are hereby enjoined and restrained from removing, transferring, disposing of, or attempting in any way to remove, transfer or dispose of, or in any way interfere with any property, assets or effects in the possession of the Debtor, or owned by the Debtor, [fol. 92] whether in the possession of the Trustees or otherwise, and from doing any act or thing whatsoever, to interfere with the possession and management by the Trustees of its assets, properties and business, real, person- or mixed, tangible or intangible, of whatsoever kind and de-

scription, and wheresoever situated, whether in this state, judicial district, the United States or elsewhere, or to interfere in any manner, directly or indirectly, with the possession, operation or management by the Trustees of the Debtor's estate, or to interfere in any way with the Trustees in the discharge of their duties, or to interfere in any way with the administration and disposition of the affairs and properties constituting its estate. All persons, firms, associations, corporations, their agents, attorneys, representatives and employees are hereby enjoined and stayed from commencing or continuing any judicial proceeding to enforce any lien upon the estate of the Debtor until further order of this Court, or until after the final decree.

12. The Trustees shall prepare and file with this Court within thirty days from the date hereof a list of all security holders, as provided for by Section 164 of Chapter 10.

13. The Trustees shall, within thirty days from the date hereof, prepare and file a plan with this Court, or a report of their reasons why a plan can not be effected.

14. The creditors and indenture trustees shall file proofs of claim and stockholders shall file proofs of interest with the Trustees within thirty days from the date hereof, after [fol. 93] which date no such claim or interest may participate in any plan, except on order for cause shown.

And it is further ordered, adjudged and decreed:

1. That all attorneys for creditors or stockholders shall file with the Court a statement, as required by Section 210 of Chapter 10 of the Bankruptcy Act of 1938 (Chandler Act); and that every person or committee representing more than twelve creditors or stockholders shall file a statement as required by Section 211 of said Bankruptcy Act, within thirty days from the date hereof.

Guy L. Fake, District Judge.

I hereby certify that the foregoing is a true copy of the original on file in my office.

Benjamin F. Havens, Clerk, per Charles E. Jaeckel, Deputy. (Seal.)

[fol. 94] EXHIBIT "C", ANNEXED TO ANSWER OF TRUSTEES

ORDER CONFIRMING PLAN OF REORGANIZATION

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

In Proceeding for Reorganization

In the Mafter of Reynolds Investing Company, Inc., a Corporation, Debtor

The plan of reorganization heretofore filed herein by the Trustees in the office of the clerk of this Court on March 29, 1940 having been approved by order of this Court dated April 19, 1940; and this Court having made an order, dated May 31, 1940, directing John Grimshaw, Jr., Esq., Special Master, to give notice to the debtor, the creditors and stockholders, the Indenture Trustee, the Securities and Exchange Commission, the Secretary of the Treasury, and such other parties and committees as have intervened or appeared in these proceedings, of a hearing to be held for the consideration of confirmation of said plan and of such objections as may be made to the confirmation; and the said plan having been considered, and due consideration having been given thereto, and the Court having been fully advised in the premises,

Now, upon reading the said plan of reorganization filed herein on March 29, 1940 by the Trustees, and the order herein approving the same, dated April 19, 1940; and it appearing from the affidavit of Evelyn Hamm, clerk in the [fol. 95] office of John Grimshaw, Jr., Esq., Special Master, sworn to June 12, 1940, that notice of said hearing for the consideration of the confirmation of said plan and of such objections as may be made to the confirmation was given to the debtor, the creditors and stockholders, the Indenture Trustee, the Securities and Exchange Commission, the Secretary of the Treasury, and such other parties and committees as may have intervened or appeared in these proceedings, as required by order of this Court dated May 31, 1940; and upon all the testimony, papers and proceedings heretofore had herein; and the Court being satisfied that (1) the provisions of article VII, section 199, and article X of Chapter X of the Bankruptcy Act have been complied with, (2) the plan is fair and equitable, and feasi-

ble, (3) the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by the Bankruptcy Act, (4) all payments made or promised by the debtor, or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge, and (5) the identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, upon the consummation of the plan, have been fully disclosed, and the appointment of such persons to such offices, or their continuance therein, [fol. 96] is equitable, compatible with the interests of the creditors and stockholders and consistent with public policy; and it further appearing that the said plan has been accepted in writing, filed in court by or on behalf of creditors holding two-thirds in amount of the claims filed by holders of debentures, and allowed, and by and on behalf of stockholders holding the majority of the shares of stock of which proofs have been filed and allowed of each class;

It is, on this 17 day of June, 1940, upon motion of John Gerdes and James D. Carpenter, Jr., as Trustees,

Ordered, adjudged and decreed

1. The said plan of reorganization is hereby in all respects confirmed.

2. The title to all of the debtor's property, real and personal, wherever situated, except claims belonging to the debtor or to the debtor's estate which have not been settled or adjusted in the reorganization proceeding, shall be transferred in accordance with the said plan to the debtor, and said property so transferred to the debtor shall be free and clear of all claims and interest of creditors and stockholders, except such claims and interests as may otherwise be provided for in the plan, or in this order, or in any other order directing or authorizing the transfer or retention of such property.

3. All claims in favor of the debtor or the debtor's estate not settled or adjusted in the reorganization proceeding

shall be retained and enforced by the Trustees, as provided [fol. 97] in the plan.

4. The debtor shall comply with the provisions of the said plan, the provisions of this order, and other orders of the Court relative to said plan.

5. All persons, firms or corporations are directed to perform and carry out all acts by each of them required to be performed or carried out pursuant to the provisions of this plan and the orders of the Court relevant thereto.

6. The Trustees shall transfer to the debtor all the assets of the debtor excepting the claims hereinbefore provided to be retained by the Trustees.

7. The Trustees, the Indenture Trustee, and all other parties or persons shall execute and deliver or join in the execution and delivery of whatever instruments may be necessary to effectuate the foregoing transfers of the property of the debtor and to effectuate all other provisions of said plan of reorganization.

8. The Trustees and all other necessary persons or parties shall do any and all acts which may be necessary, or found desirable by order of this Court upon recommendation of the Trustees, to effectuate the distribution to creditors, stockholders and others of the cash, securities or other property provided to be distributed to them under the terms of said plan of reorganization.

9. The costs and expenses of administration and such [fol. 98] other allowances as shall hereafter be approved by the Court, shall be paid.

10. All applications for allowances for services rendered herein shall be filed on or before July 17, 1940 with John Grimshaw, Jr., Esq., Special Master, and all applications which are so filed are hereby referred to said John Grimshaw, Jr., Esq., as Special Master, to conduct a hearing thereon, and to consider and report thereon. Such hearing shall be held in the Bankruptcy Courtroom, Post Office Building, Montgomery and Washington Streets, Jersey City, New Jersey, at 10 A. M. on the 20th day of August, 1940, and on subsequent dates to which the hearing may be adjourned.

11. The Special Master shall file his report containing findings and recommendations on the foregoing matters as soon as practicable in the office of the Clerk of this Court, and mail, not later than the following day, notice of the filing of such report to the Trustees, to all parties who have appeared or intervened in the proceedings, or their attorneys, and to such additional parties in interest as may file with the Special Master a written request for such notice.

12. Written exceptions, if any, to the report of the Special Master may be filed in the office of the Clerk of this Court by the Debtor, the Trustees, any creditor or stockholder, or any other party in interest, not later than ten days after the filing of such report. The person filing the exceptions shall mail or otherwise serve, not later than the day following the filing, copies of the exceptions upon the Special Master, the Trustees, and all parties who have appeared [fol. 99] or intervened in the proceedings or their attorneys.

13. A hearing upon the matters referred to the Special Master, the report of the Special Master, and all exceptions filed to such report, shall be held before this Court on the 7th day of October, 1940, and on any subsequent dates to which such hearing may be postponed or adjourned, at 10:30 A. M., at the United States Post Office Building and Court House, Federal Square, Newark, N. J., at which time creditors, stockholders and other parties in interest may be heard.

14. Any hearing may be continued, postponed or adjourned, from time to time, without notice other than announcement at the hearing or at the last previous postponed or adjourned hearing.

15. A written notice of the foregoing hearings, giving the times and places of such hearings, the names and addresses of all applicants for allowances, the amounts requested and such other information as may be appropriate, shall be mailed by the Special Master, on or before July 31st, 1940, to the debtor, the Trustees, the creditors and stockholders, the indenture trustee, the Secretary of the Treasury, the Securities and Exchange Commission, and such other parties and committees as may have intervened or appeared in these proceedings, at their last known addresses.

16. The debtor shall pay all the costs and expenses of administration as shall hereafter be approved by the Judge after hearing upon notice as provided in Sections 62(d) [fol. 100] and 247 of the Bankruptcy Act, and no other sums shall be paid by the debtor or by any other person, for services and for costs and expenses in the proceeding or in connection therewith, or in connection with the plan or incident to the reorganization.

17. The Trustees and the debtor shall report in writing to this Court within 30 days from the date hereof, and every 30 days thereafter, until the entry of a final decree, the acts taken and the progress made in the consummation of the plan.

18. The Trustees shall have full power and authority, as provided by the laws of the State of Delaware, to put into effect and carry out the plan and the decrees and orders of the Court relative thereto and may take any proceeding and do any act provided in the plan or directed by such decrees and orders, without the necessity of further action by the directors or stockholders of the debtor. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the Trustees with like effect as if exercised and taken by unanimous action of the directors and stockholders of the debtor.

19. Holders of debentures and of shares of preferred and common stock issued by the debtor prior to the initiation of these proceedings, shall on or before February 1, 1946, or five years after the final decree in this proceeding closing the estate, whichever of such dates is later, present and surrender their securities to secure the new securities provided [fol. 101] to be issued to them under the plan of reorganization, after which time no holder of debentures or shares of the preferred or common stock shall participate in the distribution under the plan.

20. The Court has considered the identity, qualifications and affiliations of Dean Langmuir, G. Vernon Rogers, Samuel S. Rodman, Richardson Morris and Edwin H. Woarms, who are to be directors of the debtor, and Arthur T. Vanderbilt and Charles F. Lynch, who are to be voting trustees under the voting trust for which provision is made in the

plan of reorganization, and the Court finds that their service as such directors and voting trustees is equitable, compatible with the interests of the creditors and stockholders, and consistent with public policy.

21. The order of the Court herein dated January 26, 1939, is hereby modified by the elimination of paragraphs "(9)", "(10)" and "(11)".

Guy L. Fake, District Judge.

I hereby certify that the foregoing is a true copy of the original on file in my office.

Benjamin F. Havens, Clerk, Per E. T. Pettengill, Deputy.

[fol. 102] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

Affidavit of David Paine

STATE OF NEW YORK,
County of New York, ss:

David Paine, being duly sworn, deposes and says:

1. I am one of the attorneys for the petitioners. I am familiar with the proceedings had in the Actions referred to in this proceeding as Actions Nos. 1 and 2 and the Globe Action. I acted as trial counsel in Action No. 1.

2. I have read the Answer of John Gerdes and James D. Carpenter, Jr., as trustees for Reynolds Investing Company, Inc., debtor, verified January 4, 1942, to the petition herein, and although I regard it as unnecessary to reply to said Answer, I shall in order to advise the Court of petitioners' position with respect to the allegations of said Answer comment upon the numbered paragraphs thereof seriatim.

Paragraph 1—Petitioners admit the allegations contained in the first and second sentences of said paragraph.

Paragraph 4—Petitioners deny the allegation and refer the Court to Paragraphs 2 and 3 of the stipulation executed by petitioners and plaintiffs and "so ordered" by Judge Fake, a copy of which is annexed to the petition as Ex-

hibit D, which contemplated an application by petitioners to this Court to fix their liens, etc.

[fol. 103] Paragraph 5—Petitioners deny this paragraph, and state that there was no agreement by petitioners as to the fixing of their compensation. The paragraph is simply a conclusion of law.

Paragraph 6—Petitioners deny this paragraph and refer the Court to the fact that no agreement whatsoever is pointed out by plaintiffs to the effect that compensation should be made by the District Court of New Jersey.

Paragraph 7—The allegations in this paragraph are irrelevant. The fact that Greenbaum, Wolff & Ernst were attorneys for the Langmuir Debenture Holders Committee in the reorganization, and that as such they were paid $21,000 for their services and $1,305.79 for their disbursements is purely irrelevant. It had no more to do with the services rendered in this lawsuit than the fact that these plaintiffs as trustees of Reynolds Investing Company, Inc., were paid $87,500 in 1940 as an interim allowance for services alleged to have been rendered by them. In the application made by Greenbaum, Wolff & Ernst as attorneys for the Langmuir Committee there was a specific proviso that such application did not cover compensation for services rendered in the New York Actions.

Paragraph 8—The same comment applies to the amount paid to Kellogg, Emery & Inness-Brown as attorneys for the Dochez Stockholders Committee for their services as such. In the petition of the firm of Kellogg, Emery & Inness-Brown there was a similar proviso that the petition therein did include services rendered in the New York Actions.

[fol. 104] Paragraph 9—The petitioners deny the allegations of this paragraph.

Paragraphs 10, 11, 12, 15, 17—Petitioners admit these allegations.

Paragraph 16 is denied, except that petitioners admit that as respective attorneys for the Dochez and Langmuir Committees they consented to the order of the United States District Court for the District of New Jersey, dated June

17, 1940, a copy of which is annexed to the answer as Exhibit C.

Paragraph 18—Petitioners deny the allegations of this paragraph. The stipulation referred to above, marked "So ordered" by Judge Fake on July 10, 1941, provides in its second and third paragraphs that application shall be made to the Supreme Court of New York for the determination of petitioners' liens.

Paragraph 19—Petitioners assert that the allegations of this paragraph are irrelevant; they admit, however, that they have not applied to the United States District Court for the District of New Jersey for any allowance for services rendered in connection with the New York actions.

Paragraph 20—Petitioners admit this allegation, subject to the approval of the Court.

The following paragraphs are conclusions of law and for that reason require neither denial nor admission: 2, 3, 13, 14, and the third sentence of Paragraph 1.

David Paine.

(Sworn to January 15, 1942.)

[fol. 105] In Supreme Court of New York, New York County

Hearings Before Walter, J., on Value of Services

March 31, 1942.

Before Hon. Carroll G. Walters, Justice

Appearances:

Satterlee & Warfield, Esqs. and Greenbaum, Wolff & Ernst, Esqs., Attorneys for Petitioners, By: David Paine, Esq., of Counsel.

John Gerdes, Esq., appearing for himself and James D. Carpenter, Jr., as Trustees for Reynolds Investing Company, Inc.

The Court: All right, gentlemen.

Mr. Gerdes: May it please your Honor, I would like to note on the record that I appear here again today, specially,

at the request of the Honorable Guy L. Fake, United States District Judge for the District of New Jersey, and request your Honor to postpone all further hearings or other steps in this matter, until the determination by the Appellate Division of an application which is now pending before the Appellate Division in what is the nature of a writ of prohibition, to test the jurisdiction of this Court.

[fol. 106] I believe that your Honor probably is familiar with the step taken this morning. I telephoned just as soon as I could at ten o'clock this morning to your secretary, to advise of the fact that the writ was being applied for, and that I would request at the hearing this afternoon that all proceedings be postponed until the determination of the merits of the application for the writ.

Mr. Paine: If your Honor please, I want to call your attention in the first place that Judge Fake, when the application was before him by the Trustees here to compel us to turn over papers and so on to him, and when this question of jurisdiction first arose, he made it a condition with a stipulation which was entered into then, that this matter be referred to this Court, and we make application to this Court, to fix the fees. Now, Judge Fake has informed us that he wanted these fees fixed by the Supreme Court of New York County where the case was tried. That may not be doing your Honor much of a favor, but that is his view of that matter.

Now on this question of this remarkable notice of motion we got this morning, which is to be presented on the 17th day of April to the Appellate Division, we got a notice of motion served late this forenoon in which the respondents here, the Trustees, are asking the Appellate Division to stay this proceeding and to stay your Honor. The petition reveals, however, the fact that they went before the Court with an order to show cause containing a temporary stay, and the Court refused to give it. All that they have is a notice of motion which can come before the Appellate Division.

Now we are prepared, and we can do it very briefly I [fol. 107] think despite the importance of this matter and the great amount of work that has been expended on it—we are prepared to proceed, and I think the Appellate Division has indicated that they do not require or favor a delay of this matter or this hearing, pending the outcome of any

motion that may be made on April 17th. Therefore, we are prepared to go ahead.

The Court: Let me see the papers that were served on you.

Mr. Paine: Yes, sir.

Mr. Gerdes: Your Honor, we were supposed to serve a copy on you.

The Court: Yes.

Mr. Gerdes: And one of the things I would like to ask your Honor is as to the most convenient time when service can be made. I don't believe I am qualified to serve it upon your Honor, because it must be served as a summons in an action, and being one of the parties to the action I cannot serve it upon you. But I would like your indulgence, and perhaps some officer of the court here could make the service, and make an affidavit. We would be glad to pay the usual fee.

Mr. Paine: We will concede it was made.

The Court: I will accept service.

Mr. Gerdes: Well, we have to have, I suppose, either a notice of appearance or an affidavit of service. May I ask one of the officers here——

The Court: (To the Clerk.) Mr. Bachmann, you can serve me.

Mr. Bachmann: Your Honor, it is already on the record.

The Court: He wants you to serve me.

Mr. Bachman: (Handing paper to the Court.) You are duly served.

[fol. 108] Mr. Gerdes: So I can get an affidavit later as to service.

The Court: I note from Paragraph 21 of the Petition which has just been served upon me the following: "The Trustees sought to initiate this proceeding for the equivalent of the former writ of prohibition by an order to show cause of this Court (meaning the Appellate Division) returnable April 2, 1942, the earliest day on which the matter may be heard. They requested the stay of all proceedings in the special proceeding pending before Mr. Justice Walter. They were informed today that their application for the order to show cause has been denied."

As the Appellate Division has denied a stay of this very hearing, it seems to me that I should of course proceed.

Mr. Gerdes: May I say a word on that, your Honor, and also on another matter that Mr. Paine raised. I cannot say what was in the mind of Mr. Justice Martin. As we state in our petition, there is no concealment of the fact we apprised the Court and everybody of the fact we made the application, and it has been denied. It seems to me that the reason that it was denied was a reluctance on the part of one branch of the court to stay another branch of the court, and that the Presiding Justice probably thought it was more seemly for the application to be made directly to the judge in the matter so that he might act on his own initiative, rather than be compelled by order of another court to cease his activities in the proceeding.

The Court: But the fact is, all you have is the fact of the denial; isn't that so?

Mr. Gerdes: That is all, your Honor, and in making the [fol. 109] statement I do not purport to state the actual views of Mr. Justice Martin, because I do not know what they are. I did not see him personally. The message came through his secretary.

Now there is another matter which I should like to correct upon the record, and that is the statement of Mr. Paine that Judge Fake desires this Court to pass upon these fees. The fact is that he has repeatedly told me and the other Trustee, and the attorney for the reorganized debtor in this proceeding, that he believes he has jurisdiction, and that this Court has no jurisdiction. He has entered an order permitting the Trustees to take the action which is contemplated here.

The Court: No. I will proceed.

Mr. Gerdes: May it be noted upon the record, then, that the Trustees do not participate in the remainder of the proceedings.

The Court: You decline to participate?

Mr. Gerdes: Yes, your Honor. We appear here only specially for the purpose of contesting the jurisdiction of the Court, and we cannot, under the authority given us by the Federal Court, submit to the general jurisdiction of this Court by participating in the hearing which your Honor proposes to hold.

The Court: Now that position is utterly untenable. There is no semblance of foundation for any such view. You have made your objection to the jurisdiction of the Court;

it has been considered; it has been overruled. I have incorporated in the order overruling it a specific statement to the effect that you have an exception.

Now you may again state on the record that you again [fol. 110] except to my ruling overruling the objection to jurisdiction. You have been overruled in that. It is your duty to proceed, and I will hold you in exactly the same position as if you had proceeded. I think there is no right in any litigant to come into a court and question the jurisdiction of the court, and then say, when it is overruled, "I decline to participate further", unless you are deliberately and intentionally intending that this matter of the fixation of the fees shall be fixed solely upon the evidence adduced by the petitioners.

Mr. Gerdes: May it please your Honor, I am here as the representative of the Federal Court.

The Court: You are here as a Trustee in Bankruptcy who has brought actions in this court, Mr. Gerdes.

Mr. Gerdes: As an officer of the Federal Court; and as such officer, I must abide by the wishes of the Court. My instructions have been not to participate in any hearing on the merits but to present the jurisdictional question, and to cooperate in every possible way with this Court and the other litigants to have a review of the question of jurisdiction by the higher courts, both state and federal.

The Court: There is nothing in my proceeding that is going to prevent or embarrass your reviewing the question of jurisdiction up to the Supreme Court of the United States.

Mr. Gerdes: Your Honor, I regret that I must retire.

(Exit.)

Mr. Paine: Your Honor, what I proposed to do, subject to your approval, is to then conduct an inquiry something in the nature of an inquest.

[fol. 111] The Court: Well, I don't want to characterize it. The facts speak for themselves, that the objections of the respondents to jurisdiction have been overruled. They were perfectly at liberty to take an objection again upon this hearing. I shall treat the record as if they have done so, and it has been again overruled, and they again have an exception to the overruling.

Mr. Paine: There is one stipulation, just to keep the record straight, that I would like to read. When this matter

came before Judge Fake on July 10, 1941 in his court in Jersey City—that is the motion to compel us to turn over papers to the Trustee which we claimed under our possessory lien—he allowed the motion to be withdrawn by the Trustees, although he indicated at the time that he believed he would deny it. He allowed it to be withdrawn on a stipulation which read in part as follows——

The Court: Well, that stipulation is one that is already a part of the record, isn't it?

Mr. Paine: Yes, sir. I just want to read a part of it, if I can find it.

The Court: Well, we are not going to go over the question of jurisdiction here again.

Mr. Paine: No, sir. Paragraph Three: "Upon conclusion of the reference before Philip Dunn, Esquire, in Gerdes vs. Reynolds, et al., and the entry of judgment thereon (at which time the relationship of attorney and client between petitioners and respondents shall terminate), respondents will commence proceedings for the fixation of their lien in accordance with the laws of the State of New York", and that is a part of the stipulation which was signed by both parties, and was marked "So Ordered" by the Judge.

Now, Mr. Warfield, will you take the stand?

[fol. 112] Ethelbert Warfield, residing at 400 East 52nd Street, New York City, called as a witness on behalf of the petitioners, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Paine:

Q. Mr. Warfield, you are a member of the Bar of the State of New York?

A. I am.

Q. A member of the firm of Satterlee & Warfield at the present time?

A. Yes, sir.

Q. And were you formerly a member of the firm of Kellogg, Emery and Inness-Brown?

A. I was.

Q. Was that firm attorneys in three actions in the Supreme Court of New York County for the plaintiffs?

A. It was.

Q. In which Messrs. Gerdes and Carpenter were the plaintiffs, and they were Trustees, is that right?

A. It was.

Q. Now, state whether or not you had charge for the firm of Kellogg, Emery & Inness-Brown of those three suits?

A. I did, from the date on which the firm was first called into the matter.

Q. And when was that?

A. That was June 22, 1938. We were representing the corporation, not these particular plaintiffs, Gerdes and Carpenter, because they had not then been appointed Trustees.

Q. Yes. Now, what corporation was it you were representing?

A. Reynolds Investing Company, Inc.

Q. And in the three suits which I just mentioned, who were the defendants?

A. The defendants were C. K. Reynolds and a large group that I couldn't possibly name now, of about thirty-five defendants, I would say.

Q. Yes. That was in action No. One, we will say.

A. That is right.

[fol. 113] Q. And the same in action No. Two?

A. No. In action No. Two I think there were just C. K. Reynolds and William F. Woodward, and R. S. Reynolds, and R. S. Reynolds, Jr. R. S. Reynolds, Jr. was never served.

Q. And the third action, who was the defendant there?

A. I think it was the Globe Indemnity Company or Globe, some similar name.

Q. And in each of these three actions, were Messrs. Gerdes and Carpenter, acting as Trustees of the Reynolds Investing Company, plaintiffs?

A. Yes, although in the first action the company was a plaintiff first, and Gerdes and Carpenter were substituted.

Q. Yes. Do you recall when the first action was begun?

A. About August 4, 1938, we obtained an order; I think it was dated August 4th, and the company was served about that time.

Q. Now, was that company in the Federal Court at that time in any proceeding?

A. It was. There were proceedings pending under the old 77b, although there had not been at that time any adjudication.

Q. And at that time were Messrs. Carpenter and Gerdes—had they been appointed Trustees?

A. No, sir. They were appointed Trustees I believe on January 19, 1939.

Q. The year following that in which the action was begun?

A. That is right.

Q. Now the second action was begun in 1940, wasn't it? Do you recall?

A. I don't recall, but it was after the appointment of the Trustees.

Q. And the third action, you remember when that was begun?

A. That was quite long; that was probably 1940.

Q. Now I wish you could confine yourself to Action No. One and tell the Court briefly what was done in the way of [fol. 114] legal services in that action, beginning from the time that the action began on June 22, 1938, I think, down to November 6, 1941, which I think the record shows was the date judgment was finally entered in that action.

A. Not January 6, 1941.

Q. November 6, 1941. Did I say January?

A. Well, that is a considerable job.

The Court: Mr. Paine, when you and Mr. Gerdes saw me in chambers some time this month, I don't remember the exact date, I told you both that on this hearing I would follow the procedure of taking the schedule of services annexed to your petition as the direct examination, and permit him to simply cross-examine.

Mr. Paine: Well, I will follow that procedure. I didn't know but what he having withdrawn, that I would have to go into the thing more fully.

The Witness: Well, perhaps, your Honor, I could state I executed this petition, and that it states in reasonable detail the services rendered by my firm and our associate firm, the firm of Greenbaum, Wolff & Ernst, in connection with these proceedings, as an all-inclusive statement.

Q. Does it set forth also the number of hours that were necessarily devoted to the preparation and trial of the suit, and other incidentals in connection therewith?

A. It does.

Q. And you are acquainted in your supervision of the case with what was done, not only by Kellogg, Emery & Inness-Brown, but also by Greenbaum, Wolff & Ernst?

A. Yes. I was in almost daily conference with some [fol. 115] member of the firm of Greenbaum, Wolff & Ernst on this matter.

Q. And were the services as set forth therein necessary in conjunction with the prosecution of this action and the obtaining of the judgment?

A. I considered that they were in every detail.

Mr. Paine: I offer the petition in evidence with the schedules annexed to it.

The Court: It will be deemed marked in evidence.

(Petition received in evidence and deemed marked, Petitioners' Exhibit 1.)

The Court: It is already part of the file papers.

Mr. Paine: That seems to be all.

The Court: You are going to ask him the reasonable value of the services, aren't you?

Mr. Paine: All right.

Q. Mr. Warfield, are you acquainted with, or have you an opinion as to the reasonable value of the services which are contained in the petition and the other exhibits annexed thereto, which have been offered in evidence, and which is Petitioners' Exhibit 1?

A. I have.

Q. And basing your answer on the petition which you have testified to, what would you say was the fair and reasonable value of the services of the two firms, Kellogg, Emery & Inness-Brown, and Greenbaum, Wolff & Ernst, in the proceeding Number 1, Number 2 and Number 3—in those three actions?

[fol. 116] The Court: You will have to separate it.

Q. Well then, will you take Action No. 1 and state what in your opinion the reasonable value was in that action of the services of the attorneys for the plaintiff?

A. I would say in my opinion the reasonable value of the services in Action No. 1 is $145,000.

Q. And in Number 2?

A. I would say it was $5,000.

Q. And in Number 3?

A. I would say it was $100 Oh, I beg your pardon—$1,000.

Q. That would make $151,000 all told?

A. Yes, sir.

The Court: The Trustees may now cross-examine. (There was no response.)

The Court: Have the petitioners anything further?

Mr. Paine: I suppose, your Honor, that the judgments are considered to be in evidence. If not, I will offer the judgments which were entered here, in the Suit No. 1, in evidence.

The Court: All right. They will be deemed marked. They are already a record in this court.

(Judgments received in evidence and deemed marked, Petitioners' Exhibit 2.)

Mr. Paine: I think I will also offer in evidence, so that they be deemed offered in evidence, the files in the office of the County Clerk of New York County—the files in regard to this case. There are of course the report of the Referee [fol. 117] and various other matters which I think should all be deemed marked in evidence.

The Court: All right. They will be deemed marked.

(County Clerk's Files received in evidence and deemed marked, Petitioners' Exhibit 3.)

Mr. Paine: Mr. Greenbaum is here, and if your Honor wishes any cumulative evidence on this thing, I should be glad to supply it.

The Court: Well, I suppose Mr. Greenbaum agrees with Mr. Warfield; does he?

Mr. Paine: I think he does.

Mr. Greenbaum: In toto.

The Court: And Mr. Greenbaum is here for cross-examination by the Trustees if they so elect.

Mr. Paine: Yes, sir.

By the Court:

Q. In fixing the value, Mr. Warfield, I suppose of course you have taken into consideration the time consumed?

A. Yes, sir.

Q. And the nature of the work?

A. Yes, sir.

Q. Have you taken into consideration the results obtained?

A. I have, sir, to the extent of fixing a higher value on services in Action Number 1 in which judgments have been obtained, although up to the present time collections have not been made on those judgments.

Q. Have you taken into consideration the extent to which the judgments are collectible, or rather, the judgment. [fol. 118] There are two separate judgments in action No. 1, are there not?

A. Yes, sir.

Q. Have you taken into consideration the extent to which those judgments are collectible?

A. Yes, sir; but I have no final information on the amount to which they are collectible, and whether or not the testimony of the services rendered in the first action will result in the collection of the judgments eventually.

Q. You say you have taken into consideration the extent to which the judgments are collectible. What have you figured as the extent to which they are collectible?

A. Well, we have information from the Trustees that the judgments collectible against C. K. Reynolds and the people against whom the judgments have been obtained, will be divided one-half between this judgment, and one-half the judgment of the Continental Securities Corporation. The only figures I have heard from these gentlemen is that the total that will be collectible will be between $300,000 and $400,000 from the Reynolds group. But that does not include the moneys collected or collectible from other defendants, such as Prentice and Brady, who have so far paid $18,000, and other minor amounts, which should total another $15,000.

Q. Do you mean that the $300,000 to $400,000 is what these Trustees will get from the Reynolds group, or do you mean that is the total collectible, to be divided between these Trustees and the Continental Trustees?

A. That is the total that will be collected and divisible between the two. But, if your Honor please, they still have an action in Virginia——

Q. Wait just a moment. And on that state the reasonable [fol. 119] value of your services is just about equal to what will be collected, isn't it?

A. If they are correct and that is all that is collectible, it is; yes, sir.

Q. Now, have you regarded the services in this action, that is this Action No. 1, as being of any benefit to the Trustees in other actions, in other courts?

A. Well——

Q. I have specifically in mind the action against R. S. Reynolds in Virginia.

A. We have specifically excluded from this application compensation for any services actually rendered in that action. But we have considered that the services rendered here are of the first importance in the action in Virginia.

Q. You have attributed to the services rendered in Action Number 1 some element of benefit to the Trustees as a result of their actions against R. S. Reynolds in Virginia?

A. Yes, sir. I might say that the petition shows, your Honor, that a stipulation was entered into in which our services were used, under which the testimony taken in the New York action may be introduced as binding upon the parties in the Virginia action.

Q. You say such a stipulation has been entered into?

A. Yes, sir.

Q. That the testimony taken here upon the trial of Action No. 1 may be used in the trial of the action in Virginia?

A. That is right, sir. It appears in this petition.

Q. I see. All right, that is all I have.

By Mr. Paine:

Q. You spoke of the "Reynolds group", Mr. Warfield. Will you tell us what you meant by that?

A. Well, of course I mean the Reynolds group; the [fol. 120] two Reynolds groups, really; C. K. Reynolds and Woodward here in New York, and R. S. Reynolds and R. S. Reynolds, Jr. in Virginia. By the Reynolds group in this action I mean C. K. Reynolds and C. K. Reynolds, Jr.

Q. Now, in coming to your——

The Court: C. K. Reynolds, Junior? Is there any C. K., Junior?

The Witness: Yes, sir. He was a partner in Granberry & Company, your Honor.

Q. Did you, in fixing the amount of fee, take into consideration at all whether or not R. S. Reynolds, the Virginia defendant who was not served in this suit—whether

or not he was able to pay such judgment as might be obtained against him in that suit?

A. I did.

Q. And what consideration did you give that, and what conclusion did you come to?

A. Well, in connection with several conversations which were carried on partly by our two firms, it was developed that Mr. R. S. Reynolds was financially able to pay a considerable judgment; and also it is a matter of public record that he is receiving compensation at the rate of $100,000 a year from the company of which he is president, the Reynolds Metal.

By the Court:

Q. Now let me see if I understand you. Do you say your information from the Trustees is that from 3 to 4 hundred thousand dollars is the amount collectible from C. K. Reynolds and Woodward, and R. S. Reynolds?

A. No. C. K. Reynolds only, sir. I have heard different figures mentioned—350, 375, and just over $400,000.

[fol. 121] Q. But that excludes R. S. Reynolds entirely?

A. Yes, sir. And I know, if your Honor please, that at one time Mr. R. S. Reynolds said that he was prepared to go on record as stating that his total assets that he could use in the settlement of any lawsuit would not exceed $600,000.

By Mr. Paine:

Q. Do you know whether or not that case in Virginia was adjourned by the Trustees, or not?

A. I understand it has been from time to time, and it is now adjourned to some time, as I recall, about June.

Q. Yes, of this year?

A. That's right.

Colloquy Between Court and Counsel.

Mr. Paine: I think that is all, Mr. Warfield.

The Court: Well now, just this one thought occurs to me. You are having this proceeding before me, and I presided at the trial of the action.

Mr. Paine: Yes, sir.

The Court: Of course I am going to think about what I learned at that trial.

Mr. Paine: Yes, sir.

The Court: Do you want me to consider or disregard the evidence taken upon that trial?

Mr. Paine: Well, I think that should be certainly considered, and I ask your Honor to do it.

The Court: Well, it was all taken down stenographically and was printed as we went along.

Mr. Paine: Yes, sir.

The Court: And in the case of any appeal, there would be no substantial expense in submitting that record to the [fol. 122] Appellate Division, or any other court; would there?

Mr. Paine: That is correct, and I offer that record in evidence.

The Court: That will be deemed marked in evidence.

(Received in evidence and deemed marked, Petitioners' Exhibit 4.)

Mr. Paine: There is one other matter I think I should call your attention to. The Courts of this state have held, of course, that the minute the services are terminated by the discharge of the attorneys, then they have a cause of action from that time; regardless of what may thereafter eventuate, the statute of limitations runs from that moment. It has been so held in the case of *Adams* v. *the Fort Plain Bank;* and also in that same case——

The Court: Why don't you give the citation?

Mr. Paine: Yes, sir; 36 N. Y. 255; *Adams* v. *The Fort Plain Bank*. It was also said by Chief Judge Davies in that case that interest runs from the day on which the services terminated; that is the day on which the demand came due, and I shall ask your Honor to allow us interest at six per cent on this, on the following basis. It will have to be proportioned, I should think, because the letter of discharge which we got was June 3, 1941. But that of course did not terminate the matter, because we went ahead and were asked to go ahead with the reference before Mr.

[fol. 123] Dunn. The whole matter terminated on November 6, 1941, and therefore it seems to me that there will have to be an allocation or proportionate amount of interest to the principal divided in that way.

I suggest, for the purpose of the record, that I simply put Mr. Greenbaum on the stand just to confirm what Mr. Warfield said.

The Court: All right.

Mr. Paine: There is one other case, your Honor, which I think I should call to your attention. That is the case of *Martucci* v. *Brooklyn Children's Aid Society*. That is in 284 N. Y. 408. It is a case somewhat along the lines of the *Tillman* case except that it refers to the fact that the amount of recovery of the settlement will depend on factors, with some of which the respondent, who was actually the attorney there, would have no concern, because he had been discharged.

The Court: I don't get the drift of that.

Mr. Paine: Well, the idea is this: subsequent events in regard to settlement of the action after the attorney has been discharged, and what was realized, and so on, were held in that case not to be the basis on which any award or any fee could be fixed for him.

The Court: Well, by calling it a subsequent event, you can't prevent there being taken into consideration the amount of benefit, can you?

Mr. Paine: Well, I suppose the benefit——

[fol. 124] The Court: In other words, the extent to which services are beneficial is one of the elements to be considered, isn't it?

Mr. Paine: Yes, I think so. Of course in this case I take it that the results obtained, which is the term usually used by the courts—the results obtained were judgments aggregating over a million dollars. That was when our services ended. Now, how successful these gentlemen will be in collecting that sum under the methods which they have applied, I think had very little to do with it.

Lawrence S. Greenbaum, residing at 724 Stuart Avenue, Mamaroneck, New York, called as a witness on behalf of

the petitioners, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Paine:

Q. Mr. Greenbaum, you are a member of the Bar of the State of New York?

A. I am.

Q. And were you a member of the firm of Greenbaum, Wolff & Ernst during the time in which the services were rendered in this action, as set forth in the petition which has been filed here, Exhibit 1?

A. I was.

Q. And are you acquainted with the petition?

A. I am.

Q. Does it correctly set forth the number of hours that were necessarily devoted to the preparation and trial of the action, and obtaining the judgment?

A. It does.

Q. And does it also set forth correctly the services that were rendered in connection with the three actions which [fol. 125] are mentioned in it?

A. It does.

Q. Now, you heard Mr. Warfield's testimony in this proceeding just given, have you?

A. I have.

Q. And if the specific questions which were asked him, both by his Honor and by me, were asked you, will you state whether or not your testimony would be the same as his?

A. It would.

Q. In all respects?

A. Except I would like to limit the expert testimony that Mr. Warfield gave on the value of the services.

Q. Well, will you state what in your opinion was the value of the services?

A. In coming to the same conclusion that Mr. Warfield has, I feel that where attorneys are discharged, I measure the value of the services from the hours point of view of the attorney as well, and I feel that the figures that he arrived at would be substantiated without taking into consideration the question of any recovery.

Q. Yes.

A. As a cost to us.

The Court: Has any payment been received on account?
The Witness: None.
Mr. Paine. No sir.
The Court: All right.
Mr. Paine: The petitioners rest.
The Court: All right. Now, despite the fact that the respondent Trustees have not participated in the hearing and have absented themselves from the court room, I am going to adjourn the further hearing of this matter to Monday, April 6th, at 10 A. M. in the New York County Court House, in the Trial Term to which I am assigned to sit next [fol. 126] month, Trial Term Part VII. And I will request counsel for the petitioners to advise the Trustees not later than tomorrow that I have so adjourned the further hearing, for the express purpose of giving them an opportunity to come in and present anything further that they desire—or present anything that they desire; and particularly to advise them that I would appreciate hearing from the Trustees their opinion as to the value of the services.
Mr. Paine: Would it be possible, your Honor, to make that a day or two later in that week? I am going to be away on the sixth.
The Court: What date do you prefer?
Mr. Paine: Well, I should prefer Thursday or Friday of that week.
The Court: All right. Thursday the 9th, then, instead of April the sixth.
Mr. Paine: We will advise Mr. Gerdes what your Honor says:
The Court: All right.

(Further hearing adjourned to Thursday, April 9, 1942 in the Court Room of Trial Term Part VII, New York County, 10 A. M.)

[fol. 127] (Adjourned from March 31, 1942.)

Room 335, County Court Building,
New York, N. Y., April 8, 1942.

Before Honorable Carroll G. Walter, Justice.

APPEARANCES:

Satterlee & Warfield, Esqrs. and Greenbaum, Wolff & Ernst, Esqrs., Attorneys for Petitioners, by David Paine, Esq., of Counsel.

The Court: Mr. Paine, did you notify the respondents that at the last hearing I announced I would hear any evidence which they desired to present?

Mr. Paine: Yes, sir. If Mr. Dwyer will take the stand, I will prove that.

James F. Dwyer, 53 Wellington Court, Brooklyn, N. Y., called as a witness on behalf of the petitioners, being duly sworn, testified as follows:

Direct examination.

By Mr. Paine:

Q. Mr. Dwyer, are you an attorney-at-law of the State of New York?

A. Yes, sir.

[fol. 128] Q. Associated with the firm of Satterlee & Canfield, attorneys for the petitioners in this proceeding?

A. Satterlee & Warfield.

Q. Did you cause to be sent any letters to Mr. John Gerdes, respondent in this case?

A. Yes, sir, and also to James D. Carpenter, Jr., one of the respondents.

Q. And how about Colonel Twombly?

A. A letter also was sent to Colonel Twombly.

Q. From the offices of Satterlee & Warfield, is that right?

A. Yes, sir.

Q. And have you copies of those letters there?

A. Yes, sir.

Q. And were those letters sent on the dates which they bear?

A. The letter to Messrs. Gerdes & Carpenter was sent on March 31, 1942.

Mr. Paine: I offer that in evidence.

(Received in evidence and marked Petitioners' Exhibit 5.)

Q. Was there a second letter sent to these same respondents, Gerdes & Carpenter?

A. I understand there was, and I have a copy of it before me.

Q. And do the files of Satterlee & Warfield show that such a letter was sent?

A. Yes, they show that a letter was sent at 4:40 P. M. on April 1st.

Mr. Paine: I offer that in evidence.

(Received in evidence and marked Petitioners' Exhibit 6.)

The Witness: I may say, Mr. Paine, that copies of Ex-
[fol. 129] hibits 5 and 6 were sent to Mr. Twombly on April 1st at 4:40 P. M.

Q. Duplicate copies?
A. Yes, sir.

The Court: Who is Mr. Twombly in this case?
The Witness: Mr. Twombly is a member of the firm of Twombly, Putney & Hall, counsel for the Reynolds Realization Corporation.

Q. Did the Reynolds Realization Corporation, under the reorganization, succeed to the rights of the Reynolds Investment Company?
A. Yes, sir.
Q. And Mr. Twombly or his firm have not appeared in this particular proceeding, have they?
A. No, sir.
Q. But was his firm counsel in the reorganization proceedings?
A. For the reorganized company, yes, sir.
Q. Now, have you a third letter?
A. This is the letter sent to Colonel Twombly in which was enclosed copies of Exhibits 5 and 6.

Mr. Paine: I offer that letter in evidence.

(Received in evidence and marked Petitioners' Exhibit 7.)

Mr. Paine: We, your Honor, have also received, or Mr. Greenbaum has, a copy of a letter addressed to your Honor by Mr. Gerdes, and I think that I will offer that letter in evidence, to keep the record straight.

[fol. 130] The Court: Yes, I received that letter this morning.
Mr. Paine: I offer it in evidence.

(Received in evidence and marked Petitioners' Exhibit 8.)

Q. Mr. Dwyer, I show you paper marked, "Annual Report, Reynolds Realization Corporation as of December 31, 1941," and ask you whether or not that is the report which was issued by the Reynolds Realization Corporation bearing the certificate of Barrow, Wade, Guthrie & Co.?

A. Yes, sir.

Mr. Paine: I offer in evidence, if your Honor please, so much of that report as recites as follows: "During the year 1941 the Corporation received an aggregate of $34,522.37 from the liquidators of the firm of Prentice & Brady, under the judgment of the New York litigation described as 'Action Number 1', in Note 3 of the Balance Sheet."

I think that is all, Mr. Dwyer.

(Witness excused.)

The Court: The crier will please call John Gerdes and James D. Carpenter as Trustees in Bankruptcy of Reynolds Investing Company.

(The Court Officer reported that there was no answer.)

Mr. Paine: If your Honor please, at the last hearing in The Bronx, I called your attention to the fact that although we were discharged by the letter of June 5, 1941 from all [fol. 131] except attendance at the reference before Mr. Dunn, that after that date and until November 2nd, I think I put it—it was really November 27th—1941, we were engaged in the limited services of conducting the reference before Mr. Dunn and entering judgment thereon, and I would like to put Mr. Greenbaum on the stand just to show the number of hours of the total which we devoted to that reference.

The Court: That is included, is it not, in your affidavit attached to your petition?

Mr. Paine: Yes, sir. The only purpose of it is on the matter of interest from those two dates.

The Court: All right. You may put him on. I shan't go back of the November date.

Lawrence S. Greenbaum, recalled as a witness in behalf of the petitioners, having been previously sworn, testified further as follows:

Direct examination.

By Mr. Paine:

Q. Mr. Greenbaum, did you have charge for the respondents here of the reference held before Mr. Dunn in Action Number 1?

A. I did.

Q. In the period after the letter of discharge here, which was a part of the petition which was offered in evidence, June 3, 1941, did you continue the services as outlined in that letter before the referee?

A. We all did, and I think the date is June 5th, Mr. Paine.

[fol. 132] Q. June 5th?

A. Yes.

Q. I think that is the date when we started and that the letter itself which discharged us in the rest of the proceeding from any services therein was on the 3rd, isn't that correct?

A. (No answer.)

Q. Can you state how many hours of the total as has already been testified to were devoted to that reference after June 3, 1941?

A. After that date there were devoted 437¾ hours, as against a total of 8814½ hours.

Q. And of that 400-odd hours, how much was partners' time and how much was associates' time?

A. There were 76¾ hours of partners' time and 361 of associates' time.

Mr. Paine: I think that is all.

(Witness excused.)

The Court: The stipulation of July 9, 1941, Mr. Paine, provides that upon conclusion of the reference before Philip Dunn, Esq., in Gerdes against Inness and the entry of judgment thereon the relationship of attorney and client between petitioners and respondents shall terminate.

I don't think I can go back of the entry of judgment and that date I understand is November——

Mr. Paine: November 27, 1941.

The Court: November 27th.

(The Court thereupon rendered his decision as follows:)

[This decision is printed herein as the Opinion of Walter, J., on Order Fixing Lien and Amount of Attorneys' Compensation, at pages 162-168.]

[fol. 133] NOTE RE PETITIONERS' EXHIBIT 1

This exhibit is identical with the Petition of B. H. Inness Brown, et al.

(Printed herein at pages 18 to 42.)

NOTE RE PETITIONERS' EXHIBIT 2.

Judgments entered in Suit No. 1.

(Omitted pursuant to stipulation.)

NOTE RE PETITIONERS' EXHIBIT 3.

Files from office of County Clerk of New York County in regard to this case.

(Omitted pursuant to stipulation.)

NOTE RE PETITIONERS' EXHIBIT 4.

Stenographer's minutes of trial in case of Gerdes, et al. v. Reynolds, et al.

(Omitted pursuant to stipulation.)

[fol. 134] PETITIONERS' EXHIBIT 5.

Satterlee & Warfield, 49 Wall Street, New York

March 31, 1942.

John Gerdes, Esq., 1 Wall Street, New York, New York.

James D. Carpenter, Jr., Esq., 75 Montgomery Street, Jersey City, New Jersey.

Re: In the Matter of the Petition of B. H. INNESS BROWN, et al.

GENTLEMEN:

At the conclusion of the hearing before Justice Walter this afternoon, Mr. Justice Walter directed us to advise you that he was adjourning the hearing for the express purpose of giving you an opportunity to come in and present anything that you desired and particularly that he would appreciate hearing your opinion as to the value of services rendered by the firms of Kellogg, Emery & Inness-Brown and Greenbaum, Wolff & Ernst.

An exact transcript of Mr. Justice Walter's remarks is as follows:

"The Court: Now, despite the fact that the Respondent-Trustees have not participated in the hearing and have absented themselves from the court room, I am going to adjourn the further hearing of this matter to Monday, [fol. 135] April 6th, at 10 A. M. in the New York County Court House in the trial term to which I am assigned to sit next month, Trial Term Part 7, and I will request counsel for the Petitioners to advise the Trustees not later than tomorrow that I have so adjourned the further hearing, for the express purpose of giving them an opportunity to come in and present anything further that they desire, or present anything that they desire; and particularly to advise them that I would appreciate hearing from the Trustees their opinion as to the value of the services."

Upon application of counsel, Mr. Justice Walter adjourned the hearing for the purposes indicated above, to

10 A. M. April 9th, at Trial Term, Part VII of the Supreme Court, New York County.

Very truly yours, Satterlee & Warfield and Greenbaum, Wolff & Ernst.

JFD:des

[fol. 136] PETITIONERS' EXHIBIT 6.

Satterlee & Warfield, 49 Wall Street, New York

April 1, 1942.

John Gerdes, Esq., 1 Wall Street, New York City.

James D. Carpenter, Jr., Esq., 75 Montgomery Street, Jersey City, New Jersey.

DEAR SIRS:

Re: In the Matter of the Petition of B. H. INNESS BROWN, et al.

Referring to our letter of March 31st, Mr. Justice Walter, on our application, has adjourned the hearing for the purposes indicated in his remarks quoted in our letter of March 31st, to 10 A. M. April 8th at Trial Term, Part VII of the Supreme Court, New York County, instead of the same hour on April 9th.

Very truly yours, Satterlee & Warfield, Greenbaum, Wolff & Ernst.

EW/MB

[fol. 137] PETITIONERS' EXHIBIT 7.

Satterlee & Warfield, 49 Wall Street, New York

April 1, 1942.

Edward B. Twombly, Esq., Putney, Twombly & Hall, 165 Broadway, New York City.

DEAR COLONEL TWOMBLY:

Re: In the Matter of the Petition of B. H. INNESS BROWN, et al.

I am enclosing, for your information, a copy of a letter which we sent yesterday to Mr. Gerdes and Mr. Carpenter

at the request of Mr. Justice Walter, and a copy of a letter which we are sending to Mr. Gerdes and Mr. Carpenter today, changing the date from the 9th to the 8th.

Very truly yours, (Signed) David Paine.

DP/MB
Enclosure

[fol. 138] PETITIONERS' EXHIBIT 8.

April 7, 1942.

Honorable Carroll G. Walter, Justice of the New York Supreme Court Chambers, New York County Court House, Foley Square, New York City.

DEAR JUDGE WALTER:

Mr. Carpenter and I deeply appreciate your courtesy in requesting our opinion as to the value of the services rendered by petitioners. We fear however that such an expression of opinion might be construed as a participation in the hearing on the merits and as a waiver of our special appearance, although it is clear that such a result is not contemplated by your courteous request.

In any event, we have no authority as trustees to express an opinion on the matter. Even the federal court under section 62 (a) (c) (d) and 247 of the Bankruptcy Act, cannot fix the amount to be allowed to attorneys for trustees until after various affidavits have been filed and a hearing has been had upon notice to all creditors and stockholders of the debtor, the Securities and Exchange Commission, and such other persons as may be designated by the judge.

All agreements fixing fees in federal reorganization proceedings are unlawful (28 U. S. C. A. 572a). Criminal penalties are imposed for violations.

In order that you may be informed of recent developments, I call your attention to a proceeding which has just been instituted before the United States District Court for [fol. 139] the District of New Jersey by the Trustees for leave to settle, for $150,000, the judgments secured in the New York actions against C. K. Reynolds and William F.

Woodward. A similar proceeding, for leave to settle for $150,000, has also been filed in the United States District Court for the Southern District of New York by Arthur A. Ballantine, as Trustee, for Continental Securities Corporation. The petitions in these proceedings contain information regarding the financial responsibility of the defendants against whom the judgments were rendered.

This letter is not intended as an appearance in the hearing before you, but as a friendly response—outside of the record—to your courteous request.

Copies of this letter are being mailed to the attorneys for the petitioners.

Sincerely yours, (Signed) John Gerdes.

JG:HBH

IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

NOTICE OF MOTION TO RESETTLE ORDER, DATED APRIL 15, 1942

SIRS:

Please take notice that upon the annexed affidavit of John Gerdes sworn to the 21st day of April, 1942, an application will be made to this Court, at a Special Term, Part I thereof, to be held at the New York County Court House, in the Borough of Manhattan, City of New York, on the 27th day [fol. 140] of April, 1942, at 10 o'clock on the forenoon, or as soon thereafter as counsel can be heard, for an order resettling the order signed by Honorable Carroll G. Walter, one of the Justices of this Court, and entered herein on the 15th day of April, 1942; by eliminating the following language in the recitals of said order "and having defaulted in appearing at the adjourned hearing on April 8, 1942" and substituting therefor the language "and said respondents having duly advised the Court and petitioners by letter dated April 7, 1942 that they had no authority from the United States District Court to submit to the general jurisdiction of this Court by participating in the hearing on the merits, and said respondents having failed to appear at the adjourned hearing on April 8, 1942" and

for such other and further relief as to the Court may seem just and proper.

Dated, New York, April 21, 1942.

Yours, etc., John Gerdes, James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Pro Se: One Wall Street, Borough of Manhattan, New York City.

To: Satterlee & Warfield, Esqs., 49 Wall Street, New York City; Greenbaum, Wolff & Ernst, Esqs., 285 Madison Avenue, New York City.

[fol. 141] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

AFFIDAVIT OF JOHN GERDES, READ IN SUPPORT OF MOTION TO RESETTLE ORDER DATED APRIL 15, 1942

STATE OF NEW YORK,
County of New York, ss:

JOHN GERDES, being duly sworn, deposes and says that he is one of the respondents in the above entitled special proceeding.

Deponent says that on the 7th day of April, 1942 he telephoned to a clerk in the office of Mr. Justice Walter and requested him to tell Mr. Justice Walter that the trustees of Reynolds Investing Company, Inc., were not authorized by the United States District Judge for the District of New Jersey to appear generally before Mr. Justice Walter at the adjourned hearing set for the following day, April 8, 1942, to put in evidence on the merits in this special proceeding. Deponent stated to said clerk that he was mailing a letter to Mr. Justice Walter which would be in the hands of Mr. Justice Walter before the time fixed for the adjourned hearing.

Deponent further states that on said April 7, 1942, the letter, of which a copy is annexed hereto as Exhibit A, was mailed to Mr. Justice Walter, and copies thereof were mailed to Greenbaum, Wolff & Ernst and Satterlee & Warfield, at their respective offices.

(Sworn to April 21, 1942.)

John Gerdes.

[fol. 142] NOTE RE EXHIBIT "A," ANNEXED TO AFFIDAVIT OF JOHN GERDES

This exhibit is identical with Petitioner's Exhibit 8, printed herein at pages 138 and 139.

IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

AFFIDAVIT OF LAWRENCE S. GREENBAUM, READ IN OPPOSITION TO MOTION TO RESETTLE ORDER DATED APRIL 15, 1942

STATE OF NEW YORK,
County of New York, ss:

LAWRENCE S. GREENBAUM, being duly sworn, deposes and says:

I am a member of Greenbaum, Wolff & Ernst, co-petitioners in this proceeding with the members of Kellogg, Emery & Inness-Brown. This affidavit is submitted in opposition to the motion of respondents to resettle the order signed by Hon. Carroll G. Walter and entered herein on the 15th day of April, 1942, by eliminating the recital that respondents defaulted in appearing on the adjourned hearing on April 8, 1942 and substituting a clause to the effect that respondents duly advised the Court that they had no authority to submit to the general jurisdiction by participating on the merits and that they failed to appear at the adjourned hearing.

It is abundantly clear that respondents defaulted and that the recitals in the order properly characterized their conduct and should not be altered.

[fol. 143] In the first place the record establishes that the Federal Bankruptcy Court did in fact authorize respondents to participate on the merits in the instant proceedings and any contrary statement by the respondents is incorrect. As appears from the petition instituting the present proceedings (pp. 15-16 and Exhibit D annexed thereto), petitioners and respondents entered into a stipulation on July 9, 1941 and marked "so ordered" by Judge Fake of the New Jersey Bankruptcy Court on July 10, 1941 providing that the petitioners herein would commence proceedings in the State courts of New York for the fixa-

tion of their liens. The stipulation further reserved the right to respondents to question the jurisdiction of the New York courts. In other words, the Federal Bankruptcy Court expressly authorized the commencement of these proceedings, and this authorization coupled with the reservation to respondents of the privilege if they desired to raise a jurisdictional question obviously included the authority to proceed on the merits as well.

In the second place, assuming that no express authority to participate on the merits in these proceedings existed, the respondents nevertheless committed a default after the New York Court held that jurisdiction existed to determine and fix petitioners' liens and by its intermediate order entered on March 27 set down the matter for hearing upon the merits.

The decision and intermediate order of Mr. Justice Walter holding that the New York Court had jurisdiction was predicated upon the fact that the Federal Bankruptcy Court by explicit order authorized the institution of the litigation in New York with respect to which petitioners [fol. 144] herein sought to fix and determine their liens. The respondents having thus voluntarily become active litigants in the courts of New York with petitioners as their attorneys, they thereby submitted themselves to the jurisdiction of the New York court respecting all incidents of the litigation including the right in rem under the New York judiciary law to fix and determine petitioners' liens. The question whether the Bankruptcy Court did or did not authorize respondents to participate on the merits in the proceeding to fix the lien is consequently of no moment since jurisdiction to fix and enforce such liens attached by the antecedent conduct of instituting the litigation in New York with the approval and authority of the Bankruptcy Court. This Court having signed the intermediate order overruling the jurisdictional objection raised by respondents and setting the matter down for hearing on the merits, the refusal of respondents to proceed and their failure to appear at the adjourned hearing after due notice constituted a clear default.

It is respectfully submitted that the motion to resettle the order entered April 15, 1942 be denied in all respects.

Lawrence S. Greenbaum.

(Sworn to April 24, 1942.)

[fol. 145] In Supreme Court of New York, New York County

Opinion of Walter, J., on Order Overruling Respondents' Objections to Jurisdiction of the Court

(The New York Law Journal, Friday March 6, 1942.)

P. 987

[Matter in italics so in original]

New York attorneys here ask the court to fix and enforce a lien in their favor for services performed by them as attorneys for the plaintiffs in three action- brought in this court. Their clients are trustees in bankruptcy who make what they call a special appearance for the purpose of contesting the jurisdiction of the court, their contention being that only the bankruptcy court which appointed them has jurisdiction to grant the relief sought.

A petition for reorganization of Reynolds Investing Company, a Delaware corporation, under the Federal Bankruptcy Act was filed on May 18, 1938, in the United States District Court for the District of New Jersey. That court, on August 1, 1938, authorized the company to commence an action in this court and for that purpose to retain the petitioners herein, and such action was so brought [fol. 146] on August 4, 1938. That court later appointed trustees of the company, and in its order of appointment authorized them to become parties to and to prosecute that action, and such trustees were later substituted for the company as parties plaintiff in such action by order of this court made upon their application. Those trustees also later brought two other actions in this court, one on January 16, 1940, and the other on May 29, 1940, the petitioners herein acting as their attorneys pursuant to retainer by them authorized by the bankruptcy court. The action first brought was tried and resulted in a favorable final judgment as to some matters and a reference as to others (*Gerdes* v. *Reynolds*, 28 N. Y. Supp. 2d, 622). The other two actions have not yet been tried and are still pending undetermined.

In June, 1941, while the reference was pending, the trustees, who themselves are lawyers, one of New York and the

other of New Jersey, notified their attorneys that they would take over the litigation, with the exception that they would expect the attorneys to conclude the hearings before the referee. Such notification was not because of any misconduct on the part of the attorneys. The attorneys replied that they were prepared to accede to the trustees' wishes provided they were relieved of their responsibilities and their fees and disbursements to date were paid. The trustees thereupon petitioned the bankruptcy court for an order requiring the attorneys to turn over all papers and fixing the amount of their fees and disbursements. The attorneys protested that the fixing and enforcement of their liens for [fol. 147] services were matters for determination by this court, and after some argument before the bankruptcy court the trustees withdrew their application to that court under a stipulation which, after various provisions respecting use of papers, provided that respondents should make this present application to this court and that both sides respectfully reserved the right to question the jurisdiction of each court. That stipulation was approved by the bankruptcy court by the judge thereof endorsing thereon the words "so ordered." That court thus in effect authorized this proceeding subject to the trustees' claim of lack of jurisdiction.

I am of the opinion that the short, simple, conclusive and all sufficient answer to the contention of the trustees is that first the bankrupt and then they themselves, both with the approval and by the direction of the bankruptcy court, voluntarily became active litigants in this court with petitioners as their attorneys, and they thereby submitted themselves to the jurisdiction of this court respecting all incidents of that litigation, and they cannot avoid such submission by the device of discharging their attorneys even though they refrain from formally moving for the substitution which they in effect seek. Asserting a claim in a court is a waiver of immunity from its process at least as to that claim and its incidents (*Sherman* v. *Buckley*, 119 Fed. [2d], 280; *The Davis*, 10 Wall. 15; *The Siren*, 7 Wall. 152; *United States* v. *The Thekla*, 266 U. S. 328, 339, 340; *In re United States Steel Products Co.*, 24 Fed. [2d], 657, 659; *United States* v. *Shaw*, 309 U. S. 495).

[fol. 148] The question, however, is not only practically important, but also has all the delicacy inherent in all questions involving possible conflicts of jurisdiction, and having

been in effect referred by the bankruptcy court to this court I think it proper that full consideration be given to the precise nature of attorneys' liens as well as of the oft-asserted exclusiveness of the jurisdiction of courts in bankruptcy over the property of the bankrupt.

Under the New York law an attorney in the absence of contract to the contrary, has two well-defined rights, which go by the names of a retaining lien and a charging lien. The retaining lien is a right to retain possession of all papers, securities, or moneys belonging to his client, which came into his possession in the course of his professional employment until he is paid whatever is due him for any and all services rendered for the client; and the charging lien is a right to have the proceeds of his client's claim or cause of action applied to the payment of his charges for services rendered in connection with that claim or cause of action (*Goodrich* v. *McDonald*, 112 N. Y. 157, 162-165; *Matter of Heimsheimer*, 214 N. Y. 361, 364, 365). Both liens existed at common law, with the exception that at common law the charging lien did not arise until judgment was recovered, whereas under the statute which is now Section 475 of the Judiciary Law it exists upon the cause of action from the commencement of the suit or proceeding for the enforcement thereof (*Matter of Heinsheimer, supra*, at p. 365; *Beecher* v. *Vogt Mfg. Co.*, 227 N. Y. 468, 471). If the at-[fol. 149] torney give cause for his discharge by the client, or if without just cause he refuse to proceed with his client's case, he forfeits his lien (*Matter of Montgomery*, 272 N. Y. 323, 326; *Holmes* v. *Evans*, 129 N. Y. 140; *Matter of Dunn*, 205 N. Y. 398, 401). The client, on the other hand, has an absolute right to discharge his attorney without cause at any time, the personal and confidential nature of the relationship of attorney and client having caused the courts of this state to treat such right to discharge without cause as an implied term of every contract of retainer (*Martin* v. *Camp*, 219 N. Y. 170; *Matter of City of N. Y.*, 219 N. Y. 192; *Matter of Krooks*, 257 N. Y. 329, 331; *Matter of Hillman*, 259 N. Y. 133, 135; *Matter of Lydig*, 262 N. Y. 408, 409; *Matter of Weitling* 266 N. Y. 184, 186). But while a client who exercises that right to discharge his attorney without cause does not make himself liable for damages for breach of contract (*Martin* v. *Camp; supra*), and is entitled to immediate substitution of a new attorney (*Mater of Lydig, supra*), he thereby cancels the contract of retainer and en-

titles the discharged attorney to immediate payment of the reasonable value of the services rendered by him to the time of the discharge (*Matter of Krooks, supra; Matter of Tillman, supra; Matter of Weitling, supra; Matter of Montgomery, supra*). Quantum meruit, and not the contract of retainer, then becomes the measure of the attorney's immediate right, regardless of whether the retainer was on a contingent basis (*Matter of Krooks, supra; Matter of Tillman, supra; Matter of Weitling, supra*), or for stated sum (*Matter of Montgomery, supra*).

[fol. 150] A client has absolute power to make an honest and good faith settlement of his case, even though he has contracted with his attorney for a contingent fee of a percentage of the amount recovered, the attorney's lien being then imposed upon the proceeds of the settlement (*Matter of Levy*, 249 N. Y. 168), but subject to the client's right to settle the attorney is regarded as in the position of an equitable assignee of the client's claim (*Beecher* v. *Vogt Mfg. Co.*, 227 N. Y. 468, 472; *Matter of Levy, supra*, at p. 171), and the essence of the right which now goes under the name of a charging lien is a right to have the court exercise in the attorney's favor the control which the court has of its judgments and records and of the means of enforcing its judgment (*Goodrich* v. *McDonald*, 112 N. Y. 157, 164, 165). Under some circumstances the attorney may bring an action to enforce his lien (*Fischer-Hansen* v. *Brooklyn Heights RR.*, 173 N. Y. 492), but the usual and customary as well as the historical method of enforcement is an application to the court in which the client's action was brought (*Goodrich* v. *McDonald, supra*, at pp. 163-166). Sometimes such application takes the form of a proceeding to vacate a satisfaction of the judgment and permit enforcement thereof to the extent of the attorney's lien (*Peri* v. *N. Y. Central RR.*, 152 N. Y. 521, 522; *Matter of Regan*, 167 N. Y. 338). At other times it takes the form of a petition by the attorney to fix the value of his services (*Matter of King*, 168 N. Y. 53; *Matter of Fitzsimons*, 174 N. Y. 15). At still other times the lien is fixed as an incident of an application by the client for a substitution of attorneys or to compel a turning over of papers (*Matter of Krooks*, 257 N. Y. 329; [fol. 151] *Matter of Tillman*, 259 N. Y. 134; *Matter of Weitling*, 266 N. Y. 184). In a procedural sense, such applications by attorneys, whether entitled in the client's action or not, are regarded as separate special proceedings

rather than as proceedings in the client's action (*Peri* v. *N. Y. Central RR., supra; Matter of Regan, supra; Matter of King, supra*, at p. 60; *Matter of Fizsimons, supra*; at p. 20), but the important fact is that they are made to the court in which the client's action or proceeding was brought and in which the attorney's services were rendered, and that such court has been expressly held to have jurisdiction thereof even where the client was an administrator appointed by and accountable to another court (*Matter of Atterbury*, 222 N. Y. 355), or even a trustee acting under appointment in another state (*Matter of King, supra*, at pp. 59, 60).

Two things are thus conspicuously manifest: First, that an attorney discharged without cause thereby becomes immediately entitled to payment of the reasonable value of the services rendered to the date of his discharge, irrespective of the terms of the contra . by whi h he was retained, and, second, that he is entitled i inv the process of the court in which was or is pending t ..on or proceeding in which he rendered his services to obtain such payment before his client gets the proceeds of the judgment or settlement which the attorney's efforts have brought about. In other words, to repeat, the thing we call a lien is a right to have that court so control its own judgments and processes as to see that the attorney is paid before the client gets the recovery into his own hands (see, again, *Goodrich* v. *McDonald*, [fol. 152] *supra*, and *Matter of King, supra*). As was said in those cases, the attorney's lien is a peculiar lien, to be enforced by peculiar methods, and was never enforced like other liens.

Enforcement, however, is the attorney's right, and the court has no jurisdiction to free from the lien property which the statute declares is subject to it (*Robinson* v. *Rogers*, 237 N. Y. 467, 472, 473), even to the extent of decreeing a setoff against the client's cause of action (*Beecher* v. *Vogt Mfg. Co.*, 227 N. Y. 468). Fixation, at least, there must be (*Matter of Tillman, supra; Matter of Krooks, supra; Bernstein* v. *Bedrick*, 262 N. Y. 472, 473), and while there may be some uncertainty as to whether or not papers may be ordered turned over to the client, with consequent destruction of the retaining lien, without actual payment of the attorney's charges, it is certain that as to the charging

lien "the courts cannot themselves substitute another form of protection for that provided in the statute" (*Robinson* v. *Rogers, supra,* at p. 472).*

---

*No application to compel the turning over of papers is presently before the court and no definite adjudication need now be made, but it is not out of place to note the decisions with reference thereto.

The Court of Appeals several times has intimated that the turning over of papers may be ordered when the attorney's fees are fixed and either *paid or secured* (*Matter of Dunn,* 205 N. Y. 398, 401; *Robinson* v. *Rogers,* 237 N. Y. 467, 471; *Bernstein* v. *Bedrick,* 262 N. Y. 472, 473), but it also has stated that upon discharge the attorney is entitled to be *paid,* and that the client can discharge the attorney only "upon *payment* for services rendered" (*Matter of Weitling,* 266 N. Y. 184, 186). The view that the giving of adequate security is sufficient was taken by the Appellate Division of the Fourth Department in *Matter of Makames* (238 App. Div. 534, 537), and *Gurecki* v. *Bush* (254 App. Div. 813, 814). The decision of the Second Department in *Matter of Korn* (255 App. Div. 870, 871) seems to take the view that payment in cash is essential. In *Matter of McNally* v. *Youngs* (237 App. Div. 787, 188) the First Department interpreted *Robinson* v. *Rogers* (supra) as requiring payment as a condition of turning over papers, and also as a condition of granting substitution, but that decision was rendered before *Matter of Lydig* (262 N. Y. 408), and *Bernstein* v. *Bedrick* (supra), and in the later case of *Fitzsimmons* v. *Long Island Lighting Co.* (251 App. Div. 395, 399), the First Department held that it was error to make substitutions conditional upon payment, and also held, upon the authority of *Robinson* v. *Rogers* (supra), without citing *Matter of Weiling* (supra) that papers may be ordered turned over upon either payment or the furnishing of proper security.

The client's "pressing necessity" for papers in the attorney's possession frequently has been put forward as a ground for compelling their delivery to him (see, for example, *Matter of Makames,* 238 App. Div. 534, 537), but in *Matter of Weitling* (266 N. Y. 184, 186, 187) the Court of Appeals expressly stated, "In the absence of such payment

[fol. 153] The attorneys' liens as thus developed in New York are not mere regulations of practice of its courts. They are substantive rights which the federal courts recognize and enforce, and it is settled that they are not displaced or invalidated by the bankruptcy of the client (*In re Baxter & Co.*, 154 Fed. 22, 25; *In re Badger*, 9 Fed. 2d 560; *In re San Juan Gold, Inc.*, 96 Fed. 2d 60; *In re Prudence Co., Inc.*, 96 Fed. 2d 167, 160; *Nic Projector Corp'n.* v. *Movie-Jecker Co.*, 16 Fed. Supp. 605; *Lawrence* v. *Commodore Nav. Corp'n.*, 27 Fed. Supp. 139). The federal courts further hold that the suit upon which the lien exists (the suit in which the attorney's services were rendered) cannot be terminated or finally disposed of without fixing the attorney's lien, and that a proceeding to fix the lien is so strictly ancillary to that suit that federal jurisdiction of such a [fol. 154] proceeding exists even though there be no such diversity of citizenship between the parties to such proceeding as would support federal jurisdiction of the fixation proceeding apart from the court's jurisdiction over the client's suit—and that, too, even though no substitution of attorneys in the client's suit is asked (*Woodbury* v. *Jergens Co.*, 69 Fed. 2d 49; *Lawrence* v. *Commodore Nav. Corp'n*, *supra*). In strikingly emphatic fashion, therefore, the federal courts also recognize the essential nature of the attorney's charging lien as being, as I have stated above, a right in the attorney to have the court in which the client's suit was brought so to control its own judgments and processes as to see that the attorney is paid before the client gets any recovery into his own hands (see also *Tuttle* v. *Claflin*, 88 Fed. 122, 124, 125, holding that an attorney's lien upon

---

the retaining liens remains in force and the attorney cannot be compelled to surrender the papers in relation to the action in his possession, in the absence of unprofessional conduct on his part," and it hardly can be said that it is unprofessional conduct for an attorney to insist upon a lien which the law gives him. It repeatedly has been recognized that the lien is valuable in proportion as denial of access to the papers causes inconvenience to the client, and that the lien cannot be disdegarded merely because the pressure it is supposed to exert becomes effective (*In re San Juan Gold, Inc.*, 96 Fed. 2d 60), which so held even upon an application to compel the turning over of papers needed in a bankruptcy reorganization.

[fol. 155] a recovery should be fixed before it is turned over to an assignee for the benefit of creditors in another jurisdiction).

That being the essential nature of an attorney's charging lien it would seem to follow that, despite the bankruptcy of the client, the power to fix and enforce the lien still must remain in the court in which the client's suit was brought; but even if that result do not follow from the nature of the lien alone there are still other reasons why the bankruptcy of the client does not cause the power to fix and enforce the lien to pass from that court to the bankruptcy court.

The rule that the bankruptcy court has exclusive jurisdiction to deal with the property of the bankrupt estate is but an application of the broader rule that when a court of competent jurisdiction takes possession of property for the purpose of administering it no other court can then interfere with or disturb that possession (*Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, 737), which is a rule I myself recently have had occasion to enforce (*City of N. Y.* v. *Darlington*, 177 Misc. 87, 90), and when a state court at the time bankruptcy occurs already is proceeding to ascertain and enforce existing liens of a kind not invalidated by the bankruptcy, that identical rule requires, and has evoked the holding that the bankruptcy does not oust the state court of its jurisdiction or vest the bankruptcy court with power to enjoin its proceedings (*Straton* v. *New*, 283 U. S. 318, and see also *Metcalf* v. *Barker*, 187 U. S. 165, which is particularly apposite because it related, in part, to a lien which, [fol. 156] like an attorney's charging lien, was acquired by the commencement of a suit).

It consequently would seem that, as an attorney's lien dates from the commencement of the client's action and is one of a kind not invalidated by bankruptcy, and as an application by a discharged attorney for enforcement of such lien is, in substance though not necessarily procedurally, an application to the court in which that action is or has been pending to exercise its own existing power over its own judgments and processes, it is that court which is to be regarded as having first taken possession of the property involved (the client's cause of action) and the court which is to retain that possession free from the interference of any other court.

The assertion that by the filing of a petition in bankruptcy the property of the bankrupt is placed in the custody

of the bankruptcy court (*Straton* v. *New, supra,* at p. 321), when applied to a liability or chose in action as distinguished from tangible real or personal property, is at best the assertion of a legal concept based upon the court's power over a person (see cases cited in *Sherman* v. *Buckley,* 119 Fed. 2d 280, 282, first column), and while I concede both the utility and effectiveness of the concept under certain circumstances I do not think it can prevail when it collides with the equally well-founded concept that when the cause of action was made the basis of a suit in a court it came into the custody of that court.

If in ascertaining and enforcing an attorney's lien the court in which the client's cause of action is asserted were making a general disposition and distribution of all the [fol. 157] bankrupt client's property, or generally marshaling all liens and claims upon all such property, then, of course, bankruptcy, necessarily would halt its proceedings (*Straton* v. *New, supra,* at p. 327), but in so ascertaining and enforcing the lien it is doing nothing of that sort. In so doing it is merely determining what part of one item of the bankrupt client's property remained vested in him after the commencement of the action made the attorney therein the equitable and statutory assignee of some fraction of that one item of property, and it is only the part which so remained vested in the bankrupt client which ever became subject to administration in bankruptcy (compare the recognition in *In re Borok,* 50 Fed. 2d 75, 77, and in *In re Worrall,* 79 Fed. 2d 88, 90, 91, that a transfer which destroys the bankrupt's title to or control over a chose of action, such as an assignment of which the debtor is notified, prevents such chose in action from coming into the "possession" of the bankruptcy court).

In point of fact, moreover, the bankruptcy courts themselves recognize that causes of action which the bankrupt is prosecuting by means of a suit do not come into the custody or possession of the bankruptcy court by the mere fact of the filing of the petition or of the adjudication. A trustee in bankruptcy does not by the mere fact of his appointment become a party to every lawsuit in which the bankrupt is plaintiff, and the mere fact of bankruptcy does not operate as a stay. Unless the trustee take some affirmative action the suit may proceed as if bankruptcy had not intervened (Bankruptcy Act, section 11, sub-division (c); 11 U. S. Code, sec. 29; Collier on Bankruptcy, 14th ed., paragraph

[fol. 158] 11.10; *In re Prudence Co., Inc.*, 96 Fed. 2d 157), and where the trustee allows the bankrupt to continue prosecution of a pending suit through his own attorney that attorney's contract of retainer is not canceled, and he is entitled to the fee stipulated therein (*In re Prudence Co., Inc.*, 96 Fed. 2d 157). That that is so demonstrates, I think, not only that the trustee's title to a cause of action which is being asserted in a lawsuit is subject to the attorney's lien, but also that such a cause of action affords at least one instance, where even under the Bankruptcy Act, the trustee's acquisition of title does not draw with it even the constructive possession which sometimes suffices as a basis for an exercise of summary jurisdiction by the bankruptcy court.

It is, indeed, little short of an absolute contradiction to say that a bankruptcy court has possession of something which the trustee must go into another court in order to get. If, however, causes of action being prosecuted by the bankrupt by means of a suit were to be regarded as coming into the possession of the bankruptcy court by the mere fact of the filing of the petition or of the adjudication, that still would not exclude the jurisdiction of this court in this case.

Even where the jurisdiction of the bankruptcy court is exclusive, it is exclusive "save by consent of the Bankruptcy Court" (*Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, 739), and not only is it common practice for the bankruptcy court to permit state courts to exercise jurisdiction where it could prevent such exercise (*In re Schulte United, Inc.*, 49 Fed. 2d [illegible]4), but there also appears a growing tendency (to be accelerated no doubt by *Erie R. R.* v. [fol. 159] *Tompkins*, 304 U. S. 64), to regard it as an abuse of discretion to refuse to permit such exercise where local rights or questions are involved and there is no actual interference with or encumbrance upon bankruptcy administration (*Foust* v. *Munson S. S. Lines*, 299 U. S. 77, 86; *State of Texas* v. *Donoghue*, 302 U. S. 284; *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478). In the case last cited the word "nondelegable" was used in connection with the statement of the bankruptcy court's exclusive control over the administration of an estate in its possession (p. 483), but that word was not used as meaning that the bankruptcy court may not permit the determination of rights to or against property in its possession by litigation in the state courts is demonstrated by the fact that in that very case the

bankruptcy court was reversed because it had refused to permit such determination by means of a suit in a state court.

The bankruptcy court thus may and sometimes should permit state courts to determine rights and questions affecting property which is either actually or constructively in its possession, and where, as here, the bankruptcy court has authorized the institution of actions in this court, and the trustees have become litigants in this court through attorneys authorized by them and by the bankruptcy court, there can be no doubt of the jurisdiction of this court to carry the litigation through to its end, including the incident of fixing and enforcing the attorney's lien (*Sherman* v. *Buckley*, 119 Fed. 2d 280; *Ohio Oil Co.* v. *Thompson*, 120 Fed. 2d 831, 836, second column). Choice was made when the trustees became parties to the litigation in this court. [fol. 160] They cannot revoke that choice now.

The trustees urge that by various orders and by its approval of a plan of reorganization the bankruptcy court has enjoined the commencement or continuance of any judicial proceeding to enforce any lien upon the estate of the bankrupt, that it also has reserved the power to fix the compensation of the trustees and their attorneys, and that by their participation in the formulation and adoption of the plan of reorganization the petitioners herein have in effect agreed to abide by the plan and to look for their compensation to such allowance as the bankruptcy court shall make. It is quite doubtful, I think, whether any of the provisions involved by the trustees go any further than what would be true under the law without them, but whether that be so or not it is entirely clear that they cannot be given the effect contended for by the trustees.

The clause respecting proceedings to enforce liens is of general application and cannot be so read as to contradict the specific action of the court in authorizing the institution and prosecution of the suits in this court by the trustees through these petitioners as their attorneys (compare *In re Prudence Co., Inc.*, 96 Fed. [2d] 157, 159, 160). In like manner, the clause respecting fixation of fees by the bankruptcy court obviously applies to fees for services in the bankruptcy proceeding, and cannot be read as having application to fees for services in the actions which the court authorized to be brought in this court (compare *Palmer* v. *Larchmont Manor Co.*, 284 N. Y. 288). The participation

[fol. 161]of these petitioners in the bankruptcy proceeding was, in part at least, as attorneys for parties other than the trustees, and they have made no request that this court either fix or allow any fee for those services. Finally, if there be any ground for saying that any act of petitioners constituted an implied agreement by them to look to the bankruptcy court for an allowance for their services in the actions in this court, as distinguished from an allowance for services rendered in the bankruptcy proceeding itself, such implied agreement was canceled and terminated when the trustees discharged them (see *Matter of Krooks*, *Matter of Tillman*, *Matter of Weitling* and *Matter of Montgomery*, all hereinabove cited), and it must here be assumed, in view of the position taken by the trustees before this court, that such discharge of petitioners by the trustees was authorized by the bankruptcy court with knowledge and appreciation of the consequences of such discharge.

Palmer v. *Larchmont Manor Co.* (284 N. Y. 288), which has been cited by the trustees has not been overlooked. What is there held is that a state court has no jurisdiction of a suit by trustees in bankruptcy unless the bankruptcy court consents to its institution, and that such consent must be pleaded and must be specific enough to authorize the particular suit which is brought. Here it is undisputed that the bankruptcy court specifically gave authorization to bring in this court the three suits which were so brought. The only feature of the case cited which is pertinent here is the approval there given to the principle I already have applied [fol. 162] that as a rule general language in orders of a court ought not to be construed as covering specific situations not apparently within the contemplation of the court when the order was made.

The objection to the jurisdiction of the court is overruled. If the trustees desire to answer further with respect to the merits they may do so within ten days after publication of this opinion. An order specifying the mode of trial upon the merits may then be settled upon notice.

IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

OPINION OF WALTER, J. ON ORDER FIXING LIEN AND AMOUNT OF ATTORNEYS' COMPENSATION

Walter, J.: This is a proceeding by New York attorneys for a fixation and enforcement of their lien for services in

three actions in this court in which they represented respondents.

In an opinion published in the New York Law Journal of March 6, 1942, page 987, I overruled respondent's objection to the jurisdiction of the Court and gave them leave to answer upon the merits. Respondents did not elect to answer farther, and I then made an order setting the proceeding down for hearing upon the merits on March 31, 1942. On that day petitioners stated that they were ready to proceed, and respondents asked that the hearing be stayed or adjourned pending the determination of a petition by them for an order prohibiting me from proceeding. Their petition for such order (which was then served upon me along with a notice of motion to be made by them in the Appellate [fol. 163] Division on April 17, 1942) contained the statement that application had been made to the Appellate Division for an order to show cause, returnable on April 2, 1942, and containing a temporary stay, and that such application had been denied. The Appellate Division having thus denied an application for a stay, I refused respondents' request for a stay or adjournment of the hearing then in progress before me, and announced that I would proceed with the taking of evidence. Respondents then stated that they would take no part in the hearing, and their representative actually left the courtroom. Petitioners then introduced their evidence.

When they had rested I of my own motion adjourned the matter to April 9, 1942 (a date later changed to April 8, 1942, at petitioners' request) and I stated that I would then hear any evidence respondents then cared to present and directed petitioners to so notify respondents, who then, as stated, had absented themselves from the courtroom. I did that in the hope that respondents would reconsider their course and give the Court the benefit of their views respecting the reasonable value of petitioners' services.

On the adjourned date, however, respondents again declined to attend or appear.

If there were any doubt as to the right of the litigant to participate in a hearing upon the merits after his objection to jurisdiction is overruled, without thereby waiving his objection to jurisdiction or his right to review by appeal the overruling thereof, the attitude of respondents would be quite understandable, but such right has been often reiterated in both State and Federal decisions (*Avery* v. *Slack*,

[fol. 164] 17 Wend. 85; *Jones* v. *Jones*, 108 N. Y. 415, 425; *Allen* v. *Gray*, 201 N. Y. 504; *Muslusky* v. *Lehigh Valley Coal Co.*, 225 N. Y. 584, 587, citing *Toledo Rys. & Light Co.* v. *Hill*, 244 U. S. 49; *Finsilver, Still & Moss* v. *Goldberg M. & Co.*, 253 N. Y. 382, 391; *Fickett* v. *Higginbotham-Bailey-Logan Co.*, 162 Misc. 18, 19; *Toledo Rys. & Light Co.* v. *Hill*, 244 U. S. 49; *Harkness* v. *Hyde*, 98 U. S. 476; *Hassler* v. *Shaw*, 271 U. S. 195; *Baldwin* v. *Traveling Men's Association*, 283 U. S. 522, 525).

As the right is thus well settled, and as that fact was called to respondents' attention by me before they absented themselves from the hearing, even to the extent of referring them specifically to *Toledo Rys. & Light Co.* v. *Hill*, 244 U. S. 49, I find it difficult to ascribe their refusal to participate in the hearing upon the merits to any genuine fear that such participation might prejudice their position upon the question of jurisdiction. Rather, I think, they put themselves in a position which justifies application of the rule that all evidence is to be weighed according to the proof which it is in the power of a party to produce (*Layer* v. *City of Buffalo*, 274 N. Y. 135, 140) and that as against a party who omits to speak every inference warranted by the evidence should be indulged (*Wylde* v. *Northern R. R. Co.*, 53 N. Y. 156, 164).

The Court accordingly now proceeds, through no choice of its own, to determine the reasonable value of petitioners' services upon the record as it stands.

Two of the actions in which petitioners rendered services, those designated in the record as Actions Numbers 2 and 3, have not been tried, and have resulted in no benefit to [fol. 165] their clients, and it seems highly problematical that they ever will be tried or that, if tried, they will actually yield more than a small financial return. Nevertheless, work actually necessarily was performed with respect to them and they presented substantial questions of law and fact and some actual benefit reasonably may be expected, and I find and decide that the reasonable value of the services rendered in Action Number 2 is $2000 and that the reasonable value of the services rendered in Action Number 3 is $750. Petitioners are accordingly declared to have a lien upon the causes of action asserted in those two actions for those amounts respectively.

The other action in which petitioners rendered services, that designated in the record as Action Number 1, is the

one which was tried before me, and the nature of it is fully disclosed in my opinion therein and in the report of the referee and in my opinion confirming that report (*Gerdes* v. *Reynolds*, 28 N. Y. Supp. 2nd 622, and 30 N. Y. Supp. 2nd 755).

Considering solely the time reasonably and necessarily spent upon the case, the difficulties involved, the nature of the services, the skill employed, the amount involved, the standing of the attorneys engaged upon the case, and the place where the services were rendered (*Matter of Potts*, 213 App. Div. 59, 62, *Straus* v. *Victor Talking Machine Co.*, 297 Fed. 791, 805, 806; *Taylor* v. *Scarborough*, 66 Fed. 2nd 589; *Rogers* v. *Hill*, 34 Fed. Supp. 358, 363; *In re Osofsky*, 50 Fed. 2nd 925, 927; *Irwin* v. *Swinney*, 45 Fed. 2nd 890, 893). I would have no hesitation in finding and deciding that the reasonable value of the services rendered in that Action [fol. 166] Number 1 is the amount stated by petitioners in their testimony, namely, $145,000. A considerably larger sum undoubtedly would be justified if the judgments obtained in the action were wholly collectible. Another element to be considered, however, is the result obtained, and I think it plain that *is* what is meant by "result obtained" is the actual benefit to the client rather than the size of the judgment entered (*Randall* v. *Packard*, 142 N. Y. 47, 57; *Rogers* v. *Hill*, 34 Fed. Supp. 358, 363). "A judgment for a sum of money is only a trophy of an empty victory unless it is collected" (*Matter of Auditore*, 278 N. Y. 234, 240) and financial ability of the debtor to pay a large judgment obviously must be taken into account.

I do not mean to say that if a client engages an attorney to prosecute a difficult and complicated claim for $1,000,000 and the attorney is successful after long effort in recovering a judgment for that amount the attorney should be awarded nothing because the judgment proves uncollectible. All that I say is that the real, rather than the nominal, result to the client is an element to be considered in fixing reasonable value.

On the other hand, the principle that it is the real benefit to the client that is to be considered, rather than the size of the judgment entered, necessarily leads to the conclusion that a benefit in addition to the judgment should be taken into the reckoning if such benefit be properly proved with reasonable certainty. (Compare *Wakeman* v. *Wheeler &*

Wilson Mfg. Co., 101 N. Y. 205, as to recovery of prospective profits on breach of contract.)

[fol. 167] It therefore is here proper to take into consideration the fact that the work done by petitioners in Action Number 1 will be of benefit to respondents in a case which respondents are prosecuting in Virginia against parties who were named as defendants in that action, but against whom a separate suit had to be brought in Virginia because those parties could not be served with process here. Not only will respondents get in the Virginia action the benefit of the facts and law examined by petitioners in the action already tried here, but it is even testified that arrangements have been made that the evidence taken in the action here may be used in the Virginia action.

Taking that benefit into consideration does not in any way involve giving petitioners a lien upon the cause of action tried here for services rendered in the Virginia action. It merely means that the entire benefit which respondents derived from the services rendered in the action tried here are taken into consideration in fixing the reasonable value of such services.

Considering that benefit, I am constrained to reduce the sum which I would otherwise fix, and I accordingly find and decide that the reasonable value of the services rendered by petitioners in Action Number 1 is $100,000. Petitioners are accordingly declared to have a lien for that amount upon the causes of action asserted and the judgments obtained in Action Number 1.

In each instance, petitioners are entitled to interest upon the respective amounts herein specified from November 27, 1941, when their services terminated and payment to them became due (*Adams* v. *Fort Plain Bank*, 36 N. Y. 255; [fol. 168] *Blackwell* v. *Finlay*, 233 N. Y. 361; *Prager* v. *New Jersey Fidelity & Plate Glass Ins. Co.*, 245 N. Y. 1; *Preston* v. *Funkhouser*, 261 N. Y. 140; *Taylor* v. *Scarborough*, 66 Fed. 2nd 589, 592).

Settle final order accordingly on two days' notice.

In the event of any appeal from such final order, appropriate provision will be made in accordance with the rules whereby the part of the record to be printed will be reduced to a minimum.

[fol. 169] AFFIDAVIT OF NO OTHER OPINION ON ORDER DENYING MOTION TO RESETTLE ORDER DATED APRIL 15, 1942

STATE OF NEW YORK,
County of New York, ss.:

Irving T. Bush, being duly sworn, says:

I am an attorney-at-law, associated with John Gerdes, one of the Trustees and attorneys pro se, one of the respondents-appellants in this proceeding and am familiar with all the proceedings herein.

No opinion was delivered by the Court below in making the order denying the motion to resettle the order dated April 15, 1942 appealed from except as appears therein, which order is printed herein at pages 15 and 16.

Irving T. Bush.

Sworn to before me this 1st day of June, 1942. William C. Porth, Attorney and Counsellor-at-Law. New York Co. Clk's No. 8, Reg. No. 4 P 179. Office & P. O. Address, 1 Wall St., N. Y. City. Commission expires March 30, 1944.

[fol. 170] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

[Title omitted]

STIPULATION AS TO EXHIBITS—May 29, 1942

[fol. 171] It is herely stipulated and agreed that Exhibit A, Annexed to Petition of B. H. Inness Brown, et al., totaling 134 typewritten pages consisted of a summary statement of services rendered, based on diary entries be and the same hereby is omitted from the printed record and that a statement be printed in lieu thereof.

It is further stipulated and agreed that the following Petitioners' Exhibits:

2—Judgments entered in Suit No. 1;

3—Files from office of County Clerk of New York in regard to this case; and

4—Stenographer's minutes of trial in case of Gerdes, et al. v. Reynolds, et al.

which were received and marked in evidence at the hearings before Hon. Carroll G. Walter, on value of services, be and the same are hereby omitted from the printed record and that a statement be printed in lieu thereof.

It is further stipulated and agreed that these exhibits may be handed up on the argument of this appeal with the same force and effect as though incorporated herein.

Dated, New York, May 29, 1942.

John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, Respondents-Appellants, Pro se. Satterlee & Warfield and Greenbaum, Wolff & Ernst, Attorneys for Petitioners-Respondents.

So ordered. F. M.

[fol. 172] In Supreme Court of New York, New York County

Stipulation Settling Case—June 1, 1942

It is hereby stipulated by and between the attorneys for the respective parties hereto that the foregoing case contains all the evidence taken upon the trial and all exceptions of all parties and that an order may be entered herein settling the same as such and ordering the same on file without further notice.

Dated, New York, June 1, 1942.

John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, Respondents-Appellants, Pro se. Satterlee & Warfield and Greenbaum, Wolff & Ernst, Attorneys for Petitioners-Respondents.

In Supreme Court of New York, New York County

Order Settling Case

On the foregoing stipulation the above case on appeal which contains all the evidence and exceptions of all parties is hereby settled and ordered on file.

Dated, New York, June —, 1942.

Carroll G. Walter, J. S. C.

[fols. 173-174] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

STIPULATION WAIVING CERTIFICATION—June 1, 1942

It is hereby stipulated by and between the attorneys for the respective parties hereto that the foregoing are true copies of the notices of appeal, the orders appealed from and all the papers used before the Court below in making the orders appealed from herein, the case and exceptions as settled and the whole thereof now on file in the office of the Clerk of the County of New York and that certification thereof is hereby waived and that an order directing the filing of the record in the Appellate Court may be entered without further notice.

Dated, New York, June 1, 1942.

John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, Respondents-Appellants, Pro se. Satterlee & Warfield and Greenbaum, Wolff & Ernst, Attorneys for Petitioners-Respondents.

IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

ORDER FILING RECORD IN APPELLATE DIVISION

Pursuant to the foregoing stipulation, it is ordered that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court, First Judicial Department.

Dated, New York, June —, 1942.

Carroll G. Walter, J. S. C.

[fol. 175] IN NEW YORK SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT

[Title omitted]

NOTICE OF APPEAL TO COURT OF APPEALS—August 17, 1942

[fol. 176] SIRS:

Please take notice that John Gerdes and James D. Carpenter, Jr. as Trustees of Reynolds Investing Co. Inc.,

Debtor, the above named respondents-appellants, hereby appeal to the Court of Appeals from the final order of the Appellate Division of the Supreme Court for the First Department, entered in the office of the Clerk of said Court on the 19th day of June, 1942, affirming the orders of the Special Term of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York on the 27th day of March, 1942, the 15th day of April, 1942, and the 30th day of April, 1942, and the said respondents-appellants appeal from each and every part of said order and from the whole thereof.

Also please take notice that said John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Co., Inc., Debtor, the above named respondents-appellants, on the above appeal will bring up for review:

(a) the above order entered in the office of the Clerk of the County of New York on March 27, 1942, overruling respondents-appellants objections to the jurisdiction of the Court,

(b) the above order entered in the office of the Clerk of the County of New York on April 30, 1942 denying respondents-appellants motion for resettlement of the order dated April 15, 1942; and

(c) so much of the order of the Appellate Division of the Supreme Court for the First Department entered in the office of the Clerk of said Court on the 19th day of [fol. 177] June, 1942, as affirms the aforesaid orders entered in the office of the Clerk of the County of New York on March 27, 1942, and April 30, 1942.

This appeal is taken as a matter of right, on the ground that there is directly involved the construction of the constitution of the United States.

Dated, New York, August 17, 1942.

Yours, etc., John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, One Wall Street, Borough of Manhattan, New York City, Respondents-Appellants Pro Se.

To: Satterlee & Warfield, 49 Wall Street, New York City. Greenbaum, Wolff & Ernst, 285 Madison Avenue, New York City, Attorneys for Petitioners-Respondents. George T. Campbell, Clerk of the above named Court.

[fol. 178] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

ORDER OF AFFIRMANCE—June 19, 1942

Present: Hon. Francis Martin, Presiding Justice; Hon. Alfred H. Townley, Hon. Edward J. Glennon, Hon. Albert Cohn, Hon. Joseph M. Callahan, Justices.

12046, 12047, 12048

In the Matter of the Application of

B. H. INNESS BROWN, DAVID PAINE, ETHELBERT WARFIELD, J. FEARON BROWN, GEORGE KOEGLER and MURRAY MACELHINNY, individually and as co-partners doing business up to the close of business October 31, 1941 under the firm name and style of Kellogg, Emery & Inness-Brown and

LAWRENCE S. GREENBAUM, EDWARD S. GREENBAUM, HERBERT A. WOLFF, MORRIS L. ERNST, JONAS J. SHAPIRO, WALLACE D. JENNINGS, SAMUEL J. SCHUR and ALEXANDER LINDEY, individually and as co-partners doing business under the firm name and style of Greenbaum, Wolff & Ernst, Petitioners-Respondents,

for an order fixing the amount to which petitioners are entitled as compensation and for the determination and enforcement of their liens for services rendered in a certain action in this court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Vincent E. Ferretti, et al., Defendants; and a certain [fol. 179] action in this Court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Richard S. Reynolds and William F. Woodward, Defendants, and a certain action in this Court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Company, Inc., Debtor, Plaintiffs, against Globe Indemnity Co., Inc., Defendants

JOHN GERDES and JAMES D. CARPENTER, JR., as Trustees of Reynolds Investing Company, Inc., Debtor, Respondents-Appellants

Appeals having been taken to this Court by John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds In-

vesting Company, Inc., Debtor, from an order of the Supreme Court, New York County, entered on the 27th day of March, 1942, overruling their objections to the jurisdiction of the court; from the final order of said court entered on the 15th day of April, 1942, adjudging that the petitioners have a lien to the extent of $102,250 upon the judgment entered in a certain cause of action in this court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Vincent E. Ferretti et al., Defendants; and adjudging that petitioners have a lien to the extent of $2,045 upon a cause of action in this court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs against Clarence K. Reynolds, Richard S. Reynolds and William F. Woodyard, Defendants; and adjudging that petitioners have a lien to the extent of $766.87 upon a cause of action in this Court entitled John Gerdes and James D. [fol. 180] Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Globe Indemnity Co., Inc., Defendant; and from an order of said court entered on the 30th day of April, 1942, denying their motion to resettle the order entered on the 15th day of April, 1942.

And said appeals having been argued by Mr. John Gerdes of counsel for the appellants, and by Mr. Lawrence S. Greenbaum of counsel for the petitioners-respondents; and due deliberation having been had thereon,

It is hereby unanimously ordered that the said orders so appealed from be and the same are hereby affirmed, with costs and disbursements to the petitioners-respondents.

Enter,

E. J. G.

[fol. 181] AFFIDAVIT OF NO OPINION BY APPELLATE DIVISION

STATE OF NEW YORK,
County of New York, ss.:

Mary-Chase Clark, being duly sworn, says:

I am an attorney-at-law, associated with John Gerdes, one of the Trustees and attorneys pro se, one of the respondents-appellants in this proceeding and am familiar with all the proceedings herein.

No opinion was delivered by the Appellate Division, First Judicial Department.

Mary-Chase Clark.

Sworn to before me this 4th day of November, 1942. Christine Laverne, Notary Public, Nassau County. Certificate filed in New York County.

[fols. 182-183] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

STIPULATION WAIVING CERTIFICATION OF RECORD TO COURT OF APPEALS—November 9, 1942

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the foregoing are true and correct copies of the Record on Appeal to the Appellate Division, First Department; the Order of Affirmance and the Notice of Appeal to the Court of Appeals, all of which are on file in the office of the Clerk of the County of New York.

Certification of all of the foregoing papers is hereby waived.

Dated, New York, November 4, 1942.

John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, Respondents-Appellants, Pro se. Satterlee & Warfield and Greenbaum, Wolff & Ernst, Attorneys for Petitioners-Respondents.

[fol. 184] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

SUPPLEMENTAL STATEMENT UNDER RULE 234

The respondents-appellants submit this supplemental record containing true copies of the order of this Court, dated December 10, 1942, granting permission to appeal from the final order of the Appellate Division, First Department, entered in the office of the Clerk of said Court on the 19th day of June, 1942, affirming the orders of the

Special Term of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York on the 27th day of March, 1942, the 15th day of April, 1942, and the 30th day of April, 1942; and the notice of appeal dated December 16, 1942, served pursuant to the permission granted.

The original record on appeal from the order of affirmance as aforesaid was duly served and filed on the 16th day of November, 1942.

[fol. 185] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

[Title omitted]

NOTICE OF APPEAL TO COURT OF APPEALS AFTER ENTRY OF ORDER ALLOWING APPEAL—December 16, 1942

[fol. 186] SIRS:

Please take notice that pursuant to leave granted by the Court of Appeals of the State of New York in the above entitled action, by an order duly made and filed in the office of the Clerk of that Court on the 10th day of December, 1942, John Gerdes and James D. Carpenter, Jr. as Trustees of Reynolds Investing Co. Inc., Debtor, the above named respondents-appellants, hereby appeal to the Court of Appeals from the final order of the Appellate Division of the Supreme Court for the First Department, entered in the office of the Clerk of said Court on the 19th day of June, 1942, affirming the orders of the Special Term of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York on the 27th day of March, 1942, the 15th day of April, 1942, and the 30th day of April, 1942, and the said respondents-appellants appeal from each and every part of said order and from the whole thereof.

Also please take notice that said John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Co., Inc., Debtor, the above named respondents-appellants, on the above appeal will bring up for review:

(a) the above order entered in the office of the Clerk of the County of New York on March 27, 1942, overruling respondents-appellants objections to the jurisdiction of the Court,

(b) the above order entered in the office of the Clerk of the County of New York on April 30, 1942 denying respondents-appellants motion for resettlement of the order dated April 15, 1942; and

[fol. 187] (c) So much of the order of the Appellate Division of the Supreme Court for the First Department entered in the office of the Clerk of said Court on the 19th day of June, 1942, as affirms the aforesaid orders entered in the office of the Clerk of the County of New York on March 27, 1942, and April 30, 1942.

Dated, New York, December 16, 1942.

Yours, etc., John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, One Wall Street, Borough of Manhattan, New York City, Respondents-Appellants Pro Se.

To: Satterlee & Warfield, 49 Wall Street, New York City. Greenbaum, Wolff & Ernst, 285 Madison Avenue, New York City, Attorneys for Petitioners-Respondents. George T. Campbell, Clerk of the above named Court.

[fol. 188] In Court of Appeals of the State of New York

Present: Hon. Irving Lehman, Chief Judge, Presiding.

In the Matter of the Application of B. H. Inness Brown & others, individually and as co-partners doing business, &c., under the firm name and style of Kellogg, Emery & Inness-Brown and Lawrence S. Greenbaum and others, individually and as co-partners doing business under the firm name and style of Greenbaum, Wolff & Ernst, Petitioners-Respondents, for an order fixing the amount to which petitioners are entitled as compensation and for the determination and enforcement of their liens for services rendered in a certain action in this Court entitled: John Gerdes and another, Trustees of Reynolds Investing Co. Inc., Debtor, Plaintiffs, against Clarence K. Reynolds and others, Defendants; and a certain action in this Court entitled: John Gerdes and another, Trustees of Reynolds Investing Co. Inc., Debtor, Plaintiffs, against Clarence K. Reynolds and others, Defend-

ants, and a certain action in this Court entitled: John Gerdes and another, Trustees of Reynolds Investing Co. Inc., Debtor, Plaintiffs, against Globe Indemnity Co. Inc., Defendants. JOHN GERDES and another, as Trustees of Reynolds Investing Co., Inc., Debtor, Respondents-Appellants

ORDER ALLOWING APPEAL—December 10, 1942

[fol. 189] A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the respondents-appellants herein, and papers having been duly submitted thereon, and due deliberation thereupon had,

Ordered that the said motion be and the same hereby is granted.

John Ludden, Clerk. (Seal.)

A copy.

[fol. 189a] STIPULATION WAIVING CERTIFICATION OF RECORD TO COURT OF APPEALS—December 30, 1942

[Same title]

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the foregoing are true and correct copies of the Notice of Appeal to the Court of Appeals, which is on file in the office of the Clerk of the County of New York, and the order of the Court of Appeals granting leave to appeal which is on file with the Clerk of said Court.

Certification of all of the foregoing papers is hereby waived.

Dated, New York, December 30, 1942.

John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, Respondents-Appellants, Pro Se. Satterlee & Warfield and Greenbaum, Wolff & Ernst, Attorneys for Petitioners-Respondents.

[fol. 190] IN THE COURT OF APPEALS OF NEW YORK

In the Matter of B. H. INNESS BROWN, et al., Individually and as Copartners under the Name of KELLOGG, EMERY and INNESS BROWN, et al., JOHN GERDES, et al., as Trustees of REYNOLDS INVESTING COMPANY, INC., Appellants.

Appeal on constitutional grounds from an order of the Appellate Division of the Supreme Court in the first judicial department, entered June 19, 1942, which unanimously affirmed (1) an order of the court at Special Term (Walter, J.), dated March 26, 1942, overruling objections of the appellants John Gerdes and James D. Carpenter, Jr., as trustees, to the jurisdiction of the court, (2) a further order of Special Term (Walter, J.), dated April 15, 1942, fixing the amounts of attorney's liens, and (3) an order of Special Term (Walter, J.), dated April 29, 1942, denying a motion by appellants to resettle the order dated April 15, 1942.

John Gerdes and *James D. Carpenter, Jr.*, for appellants.

John F. Davis, George Zolotar, W. Crosby Roper, Jr., and *David Ferber* for Securities and Exchange Commission in support of appellant's position.

David Paine, Lawrence S. Greenbaum, Theodore S. Jaffin and *James E. Dwyer* for respondents.

OPINION—April 22, 1943

FINCH, J.:

The question raised by this appeal is whether a State court may fix the fees of attorneys appointed by a Federal court subsequent to the filing of the reorganization petition of a debtor under chapter VIII (§ 77B) of the Bankruptcy Act (U. S. Code, tit. 11) to bring suit in a State court upon causes of action constituting assets of the estate of the debtor.

The controversy arose in the course of the administration of the assets of the Reynolds Investing Company, Inc., a debtor in proceedings then pending under the National Bankruptcy Act in the United States District Court for the District of New Jersey. The reorganization proceeding was commenced under chapter VIII (§ 77B) but was continued under chapter X after that chapter became effective. Petitioners-respondents, hereinafter called the attorneys, were appointed by the Federal court subsequent

to the filing of the reorganization petition, to render services in the administration of the estate under the National Bankruptcy Act. The services rendered were in the collection of claims, and were undertaken subject to the provisions of the Bankruptcy Act. The issue is whether the State court in which the suits were brought has jurisdiction to fix the fees of the attorneys in reducing the claim to judgment, or whether exclusive jurisdiction is in the Federal court in bankruptcy who appointed these attorneys and who alone can have adequate knowledge of the assets of the estate on the one hand, and on the other the total of costs, expenses and fees with the resultant proportionate percentage for cost of administration, and who alone is subject to the elaborate machinery established by the Congress in the Bankruptcy Act for the fixing of allowances.

[fol. 191] It is submitted that the Federal court in a reorganization proceeding has exclusive jurisdiction to award fees to attorneys appointed by it in payment of services to the bankrupt estate in the collection of claims in a State court. The Congress has power to make uniform laws upon the subject of bankruptcy. (U. S. Const., art. I, § 8, clause IV.) In the National Bankruptcy Act the Congress has set up a comprehensive system of bankruptcy administration and conferred exclusive jurisdiction upon the Federal courts. Chapter 10 of the Act (Bankruptcy Act, §§ 111, 114), under which this reorganization is proceeding expressly confers upon the United States District Court "exclusive jurisdiction of the debtor and its property wherever located." This is re-enforced by the specific provision that State courts shall have no jurisdiction over bankruptcy matters. (Federal Judicial Code, § 256; see, also, *Gross* v. *Irving Trust Co.*, 289 U. S. 342, *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478.). Not only does chapter 10 specifically confer exclusive jurisdiction of the debtor and its property upon the Federal court, but in addition there is specifically given exclusive jurisdiction to determine costs, expenses and reasonable compensation for services rendered in reorganization proceedings (Bankruptcy Act, §§ 62, 241-250), and there are set forth numerous meticulous provisions designed to make effective the control of the Federal court over fees and expenses. Allowances under chapter 10 may be made

only after a hearing upon notice to the debtor, the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate (§ 247). No longer are allowances fixed in a hearing confined solely to the attorneys in interest, but under chapter 10 interested parties enjoy the statutory right to appear and be heard (§ 206 [U. S. Code, tit. 11, § 606]). In addition, attorneys seeking compensation must file a statement under oath showing whether they have acquired or transferred claims against or stock of the debtor after the commencement of the proceeding, and no compensation can be allowed to any attorney who, after assuming to act in that capacity, has purchased or sold claims or stock of the debtor (§ 249). Also an attorney seeking compensation must by affidavit inform the Federal court whether he has made any agreement with any person for a division of his compensation (§ 62). If allowances and fees could be awarded in the State courts, all these elaborate provisions for a notice and hearing to all the parties interested, and prohibition against attorneys dealing in claims against the estate of the debtor could be evaded, and fees in as many State courts as there were assets of the debtor which should be collected therein, would be fixed without regard to the amount of the total expenses and assets as a whole, since the State court is dealing only with particular claims and cannot have adequate knowledge of what will comprise the entire estate [fol. 192] as to assets and total costs, expenses and fees.

Also, since these attorneys were appointed by the court in this reorganization proceeding and nothing was said as to fees, the services of the attorneys were undertaken subject to all the provisions of the Bankruptcy Act with respect to the compensation for such services. Any attempted surrender of jurisdiction by the United States Court, even if that were possible, would have to be implied. This court has ruled that there may be no implied surrender of the jurisdiction of the Federal court over a matter arising in the course of a bankruptcy proceeding. (*Palmer* v. *Larchmont Manor Co.*, 284 N. Y. 288.) Under such circumstances, even if no exclusive jurisdiction had been given to the Federal court, the attorneys would in the normal course return to have their compensation fixed by the court by whom the appointment had been made. Where attorneys have been appointed in a reorganization

proceeding to deal with an asset belonging to the debtor, it is difficult to see how a provision of the New York Judiciary Law (§ 475) could constitutionally provide for a lien upon these assets. (*Kalb* v. *Feuerstein*, 308 U. S. 433, 439.)

The control provided by the Bankruptcy Act over costs and expenses of administration, particularly including fees and allowances, is an important part of the entire reorganization and bankruptcy system. The system aims to provide maximum protection and relief for embarrassed or insolvent debtors consistent with protection and fairness to creditors and security holders. If the system is to work with satisfaction, there must be a proper balance giving on the one hand fair remuneration to those who administer the system, and on the other hand a limitation upon the total cost of administration, so that the Act in operation does not become too expensive. Centralized control over expenses incident to reorganization in bankruptcy to supplant State and Federal equity procedures, so as to reduce the cost of corporate reorganization, was one of the forces making for the enactment of the reorganization and bankruptcy statutes. (*Callaghan* v. *Reconstruction Finance Corp.*, 297 U. S. 464.) The importance of this centralized control over expenses incident to reorganization is seen in the provision of the Act (§ 258 [U. S. Code, tit. 11, § 658]) providing that administration allowances for services rendered in State or Federal court proceedings, later supplanted by a reorganization proceeding, must be determined not in the court supervising the prior proceeding but in the reorganization court. (*Matter of Keystone Realty Holding Co.*, 117 F. (2d) 1003.)

The Bankruptcy Act and chapter 10 show congressional intent to treat a reorganization proceeding not as ordinary litigation between private parties, but as involving rights and interests of many members of the general public who are usually unrepresented or inadequately represented in the proceeding. As the Supreme Court of the United States has indicated, these statutory provisions are de-
[fol. 193] signed to facilitate the participation of these various interests in matters in which they have a vital concern, and in any event furnish so far as possible, safeguards for their protection. (*Securities & Exchange Commission* v. *U. S. Realty & Improvement Co.*, 310 U. S. 434.)

If we are correct in holding that the jurisdiction of the

Federal court to determine these fees is exclusive, then it would seem clear that no waiver by the Federal court under the circumstances in the case at bar has been attempted. It is unnecessary to consider whether it was within the power of the court to surrender this jurisdiction, since it would appear that both as a matter of law and as a matter of fact the retainer of these attorneys was subject to the condition that the amount of any fees would be fixed by the United States District Court. From first to last the trustees herein have insisted upon their claim that in the case at bar jurisdiction to make allowances to these attorneys did not reside in the State court but resided in the Federal court. The stipulation of July 9, 1941 not only did not constitute a surrender of jurisdiction by the United States District Court, but contained the following specific reservation: "7. Nothing herein shall constitute a waiver of the rights of petitioners or respondents to question the jurisdiction of the courts of the State of New York, or the United States District Court for the District of New Jersey, with respect to the determination of the existence, nature or extent of respondents' liens and the payment of their fees and disbursements in connection with the aforesaid litigation."

Respondents rely upon the cases of *Sherman* v. *Buckley* (119 F. 2d 280, cert. den., 314 U. S. 657) and *Cup Craft Paper Corp.* v. *Federal Paper Board Co.*, (262 App. Div. 91, appeal dismissed, 288 N. Y. 529). In both of these cases the attorneys were not appointed by the Bankruptcy Court, but were retained and their services were rendered to the bankrupts and the liens arose, before the bankruptcy. While it is true that in *Sherman* v. *Buckley* (*supra*) the attorney continued as an attorney of record after the bankruptcy, there is nothing in the record to show that any services were rendered by him after the bankruptcy and before the substitution of attorneys, and no claim was made by him for services after the initiation of the bankruptcy proceeding. In addition, the attorneys in both of these cases were discharged and not permitted to complete the services for which they had been employed under a single contract of contingent retainer, whereas the attorneys herein were permitted fully to perform the services for which they were appointed, namely to reduce the claims to judgment. Also in the *Sherman* and *Cup Craft* cases the claims for services were provable as debts of the bankrupt and were

not within the statutory provisions regulating allowances for services in the administration of a reorganization or bankruptcy estate. As already noted, in the case at bar the attorneys were appointed by the court pending the reorganization proceeding to perform services as agents and appointees of the court. The allowances for the attorneys were administration expenses covered by the allowance provisions of the Bankruptcy Act.

[fol. 194]

It follows that the orders appealed from should be reversed and the proceeding dismissed without costs. (See 290 N. Y. —.)

Rippey, Lewis and Desmond, JJ., concur; Lehman, Ch. J., Loughran and Conway, JJ., dissent (See *Sherman* v. *Buck log*, 119 F. 2d 280; certiorari denied, 314 U. S. 657).

Orders reversed, etc.

[fol. 195] In Court of Appeals of New York

State of New York, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 22nd day of April in the year of our Lord one thousand nine hundred and forty-three, before the Judges of said Court.

Witness, The Hon. Irving Lehman, Chief Judge, Presiding, John Ludden, Clerk.

Remittitur—April 22, 1943

In the Matter of the Application of B. H. Inness Brown, & ors. incl. and as co-partners doing business &c and ors. &c for an order fixing &c compensation &c, and enforcement of their lien &c John Gerdes and ano.,—Appellants. Lawrence S. Greenbaum & ors—Respondents.

Be It Remembered, That on the 7th day of November in the year of our Lord one thousand nine hundred and forty-two John Gerdes and ano., as Trustees of Reynolds Investing Company, Inc. the appellants in this cause, came here unto the Court of Appeals, in person and filed in the said Court a Notice of Appeal return and supplemental return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Depart

ment and Lawrence S. Greenbaum & ors. individually and as co-partners &c, the respondents in said cause, afterward appeared in said Court of Appeals by Satterlee & Warfield and others, their attorneys

Which said Notice of Appeal return and supplemental return thereto filed as aforesaid are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Messrs. John Gerdes and James D. Carpenter, Jr. appellants pro se and by Mr. David Paine, of counsel for the respondents brief filed by amicus curiae, and after due deliberation had thereon did order and adjudge that the orders herein be and the same hereby are reversed and proceeding dismissed without costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Wherefore, it is considered that the said orders be reversed and proceeding dismissed without costs, as aforesaid. And hereupon, as well the Notice of Appeal, return and supplemental return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, etc.

John Ludden, Clerk of the Court of Appeals of the State of New York.

[fol. 196] Clerk's Certificate to foregoing document omitted in printing.

[fol. 197] In the Court of Appeals of New York

[Title omitted]

Order Denying Motion for Reargument—May 27, 1943

A Motion for a re-argument of the above cause, having been heretofore made upon the part of the petitioners-respondents herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered, that the said motion be and the same hereby is denied with ten dollars costs and necessary printing disbursements.

A Copy.

Raymond J. Cannon, Deputy Clerk. (Seal.)

[fol. 198] In Supreme Court of New York, New York County

Present: Honorable Felix C. Benvenga, Justice.

In the Matter of the Application of

B. H. Inness Brown, David Paine, Ethelbert Warfield, J. Fearon Brown, George Koegler and Murray MacElhinny, individually and as co-partners doing business up the close of business October 31, 1941, under the firm name and style of Kellogg, Emery & Inness-Brown and

Lawrence S. Greenbaum, Edward S. Greenbaum, Herbert A. Wolff, Morris L. Ernst, Jonas J. Shapiro, Wallace D. Jennings, Samuel J. Schur and Alexander Lindey, individually and as co-partners doing business under the firm name and style of Greenbaum, Wolff & Ernst, Petitioners-Respondents,

for an order fixing the amount to which petitioners are entitled as compensation and for the determination and enforcement of their liens for services rendered in a certain action in this court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Vincent E. Ferretti, et al., Defendants; and a certain action in this Court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Clarence K. Reynolds, Richard S. Reynolds and William F. Woodward, Defendants, and a certain action in this Court entitled John Gerdes and James D. Carpenter, Jr., Trustees of Reynolds Investing Co., Inc., Debtor, Plaintiffs, against Globe Indemnity Co., Inc., Defendants.

John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, Respondents-Appellants.

ORDER ON REMITTITUR—June 4, 1943

The above named appellants having appealed to the Court of Appeals of the State of New York from an order [fol. 199] of the Appellate Division of the Supreme Court in and for the First Judicial Department, entered in the Office of the Clerk of said Court on June 19, 1942, affirming the orders of the Special Term of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York, on the 27th day of March, 1942, the 15th day of April, 1942, and the 30th day of April, 1942, and the Court of Appeals having heard said appeal and having ordered and adjudged that the said orders be reversed and the proceeding dismissed without costs; and the above respondents having made a motion for a reargument of the said cause to the Court of Appeals of the State of New York and the Court of Appeals having after due deliberation thereon ordered that the said motion be denied with $10 costs and necessary printing disbursements, and the remittitur from the Court of Appeals having been filed herein.

Now, on motion of John Gerdes and James D. Carpenter, Jr., as Trustees of Reynolds Investing Company, Inc., Debtor, it is

Ordered, that the order and determination of the said Court of Appeals be, and the same hereby are, made the order and determination of this Court.

Further Ordered that this proceeding be dismissed without costs.

Enter.

F. C. B. J. S. C.

[fol. 200] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 201] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI. Filed October 11, 1943

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.